

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2788 OF 2013

New Star City Multiplex Pvt. Ltd.
& Ors.

..Petitioners

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Apurva Dave for the Petitioner.

Mr.A.V.Randive i/b. V.R.Randive, for the Respondent.

Mr. J.H.Ramugade, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 12, 2015.**

P.C.

1. This petition is directed against the order dated 7.8.2012 whereby the learned Metropolitan Magistrate, 48th Court, Andheri, has issued process under Section 138 of the N.I.Act, against the petitioners.

2. Learned Counsel for the petitioners has submitted that the respondent-complainant had defaulted in payment of two months rent amounting to Rs.16,00,000/-. As per the MOU, the same was to be adjusted from the deposit. The learned Counsel for the petitioners

further submits that though as per the order of the Honourable Supreme Court the tax liability was to be discharged jointly, the respondent no.2 failed to discharge his part of tax liability.

3. Learned Counsel for the respondent submitted that the complaint prima facie discloses essential ingredients of offence.

4. The petitioners are facing prosecution for offence under Section 138 of N.I.Act. The Respondent no.1-accused had lodged a complaint No.1366/SS/2012 against the petitioners for offence under Section 138 of the Negotiable Instruments Act. The respondent no.1-complainant and the petitioners had entered into an agreement for operation and management on 27.3.2007. The said agreement was subsequently cancelled and the parties entered into MOU on 14.10.2009. The complainant has alleged that as per the said MOU, the petitioners were liable to pay to the respondent-complainant a sum of Rs.34,00,000/-. The petitioners issued a cheque dated 31.3.2012 towards discharge of the said liability of Rs.34,00,000/-. The said cheque was dishonoured as “payment stopped by the drawer”. The petitioner-accused sent a letter calling upon the respondent no.1 not to deposit the cheque. While, the

respondent-complainant issued the statutory notice and called upon the petitioner to pay the cheque amount. The petitioner-accused failed to pay the said amount. Hence the respondent-complainant lodged a complaint under Section 138 of the N.I.Act.

5. The complaint prima facie discloses the essential ingredients of the offence. This is not a stage to consider the defence, or make premature assessment of the material on record. Moreover, it has been brought to my notice that the plea of the petitioner is already recorded and the trial has already commenced. Hence, the grounds raised by the petitioners will have to be considered on merits. Under the circumstances, the petition is dismissed leaving all the points and contentions open.

(ANUJA PRABHUDESSAI, J.)