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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4485 OF 2013**

Gracy Pinto ... Petitioner

Versus

State of Maharashtra and another ... Respondents

Ms. Archana Khan for the petitioner.

Smt. A.A. Mane, A.P.P. for State.

Mr. M.A. Adenwala for respondent no. 2.

**CORAM : M.L. TAHALIYANI, J.
DATED : MARCH 26, 2015**

P.C.

Admit. By consent heard forthwith.

2. Heard Ms. Khan learned counsel for the petitioner, Mr. M.A. Adenwala for respondent no. 2 and Smt. Mane, learned A.P.P. for State.

3. Petitioner is facing trial for the offence punishable under section 380, 465, 468 and 420 read with 34 of Indian Penal Code along with one Mr. Edwin Pinto who was assisting respondent no. 2. He was of very old age and was finding it difficult to manage his day to day affairs. It is alleged that taking the advantage of this situation, accused Edwin Pinto had demanded

Rs.100/- from respondent no. 2 for buying SIM card. A cheque for Rs.100/- was given to Mr. Pinto. It was alleged that while taking out the cheque from the cheque book, accused Edwin had taken one additional cheque leaf from the said cheque book. The said two cheques were filled in and deposited in the account of the petitioner. The cheques were dishonoured for want of sufficient fund in the account of respondent no. 2 Mr. Linus D'Souza. Admittedly the petitioner has filed two complaints under section 138 of the Negotiable Instruments Act against respondent No. 2 Mr. Linus D'souza. It is the case of the petitioner that she has been implicated in the false case to defeat her case under section 138 of the Negotiable Instruments Act. It is contended by Ms. Khan that the story of theft of the chques has been invented by respondent no.2 as an afterthought to take defence in the cases filed by the petitioner. During the course of hearing, it is recorded that the proceedings under section 138 of the Negotiable Instruments Act were filed in the month of July, 2007 by the petitioner and the process was issued against respondent no. 2 some time in the month of August, 2007. Respondent no.2 in his affidavit has stated that the cheque leafs were stolen and that he had lodged complaint on 9th July, 2007 itself. It is submitted that the police had registered F.I.R. much later i.e. in the year 2008. It is submitted on behalf of respondent no. 2 that respondent no. 2 cannot be held responsible for the delay caused by the police themselves. As such it is submitted that respondent no.2 was not at fault if lodging of the FIR was

delayed.

4. After considering the arguments of learned counsel for the petitioner and respondent no.2 , what can be stated is that the issues which are raised before me in the present writ petition, mainly pertain to the factual position and such questionable issues are to be determined by the trial court after recording evidence of the witnesses. It is not possible nor it is permissible to examine those issues in writ jurisdiction.

5. In my view, there is no substance in the petition. Petition stands dismissed. Rule is discharged. Learned Magistrate is directed to conclude the trial within the period of six months from the date of receipt of this order.

(JUDGE)