

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2004 OF 2015

Anindya Kalyal Chakraborty & Ors. Petitioners

V/s.

Intiaz Penwala,
Partner of M/s. Kwick Financial Services,
Bandra, Mumbai & Anr. Respondents

Mr. Rustom M. Pardiwalla, i/by Mr. K.S.
Irani, for the Petitioners.

Mr. M.K. Jariwala for Respondent No.1.

Mrs. A.S. Pai, A.P.P., for Respondent No.2-
State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH JANUARY 2016.

P.C. :

1. This Writ Petition is preferred by the Original Accused challenging the process issued against them for the offence punishable under Section 138 of the Negotiable Instruments Act. Petitioner No.1 was the Chairman and Managing Director of Petitioner No.3-Company. Petitioner No.2 was the Director of Petitioner No.3 at the relevant time of filing of the complaint. According to learned counsel for the Petitioners, at the time of filing the complaint, under Section 138 of the Negotiable Instruments Act,

Respondent No.1 has not filed original cheque or its copy, on the basis of which the prosecution was launched. The only document which he has filed was the memo received from the Bank dishonouring the said cheque. The cheque in question, which was for the amount of Rs.7,44,525/- was filed only at the stage of recording of evidence and perusal of the said cheque reveals that it does not bear the date, amount and signature. It only faintly shows that the cheque was issued in favour of M/s. Kwick Financial Services. According to learned counsel for the Petitioners, therefore, Respondent No.1 has played a fraud on the Court and misled the Court. It is further submitted that the disputed cheque in respect of which the prosecution was launched was for the amount of Rs.7,44,525/-, whereas, there was another cheque of Rs.1,50,000/-, in respect of which no case is launched and there is probability of Respondent No.1 misleading the Court by producing that cheque along with the complaint at the time of issue process as the cheque of Rs.7,44,525/- does not bear date, amount and signature. According to learned counsel for the Petitioners, therefore, the Trial Court has issued the process against the Petitioners without proper application of mind, though the law clearly expect the Trial Court to apply its mind before issuance of process. The Petitioners have, therefore, preferred an application before the Trial Court for dismissal of the complaint. The said application came to be rejected by

the Trial Court on 5th March 2015. Thereafter the Petitioners have preferred this Writ Petition.

2. In support of his submission, learned counsel for the Petitioners has relied upon two authorities that of ***Amarnath Bajinath Gupta & Anr. Vs. Mohini Organics Pvt. Ltd. & Anr., 2009 CRI. L. J. 995***, and ***Maharaja Developers & Anr. Vs. Udaysingh Pratapsinghrao Bhonsle & Anr., 2007 CRI. L. J. 2207***, which hold that issuance of process requires serious application of mind on the part of the Trial Court.

3. A submission is also advanced to the effect that no statutory notice was ever served on Petitioner No.2; not even issued to Petitioner No.2. As regards service of notice on Petitioner Nos.1 and 3, there is no documentary evidence produced by Respondent No.1. Hence, for want of statutory compliance also, the process issued against the Petitioners is required to be quashed and set aside.

4. Per contra, learned counsel for Respondent No.1 has submitted that the process was issued in the year 2010 and now when the matter is fixed before the Trial Court for recording of evidence and is already part-heard, this Petition is filed for quashing of process. According to him, all

the questions, which are raised by the Petitioners, are disputed questions of facts and in view thereof, no interference is warranted in the order of issue process.

5. The first ground on which the Petitioners are seeking quashing of the process is that the original cheque for the amount of Rs.7,44,525/- was not produced before the Trial Court, when the process was issued. However, the list of documents, which was filed along with the complaint, goes to prove that the memo of dishonor of the cheque received from the Bank was filed and the said memo clearly mentions the amount of the cheque, the cheque number and other details. Therefore, it is not the case that the Trial Court was not having any document before it when the process was issued. It also negates the contention of the Petitioners that Trial Court might have been misled by production of another cheque of the amount of Rs.1,50,000/-.

6. Whether the notice was actually served on the Petitioners or not is a disputed question of fact. As regards the cheque, which was produced at the time of trial and which, according to the Petitioners, does not bear sufficient details, now at the stage of final hearing, in the course of Judgment itself, the Trial Court will consider its legality and validity. It

would not be proper to consider it in this Petition as the scope is limited.

7. In view thereof, as the matter is already fixed for trial and is part-heard, there is no necessity to interfere in the order of issue process, as passed by the Trial Court. The Writ Petition, therefore, stands dismissed.

8. At this stage, it is made clear that the observations made in this Petition are only for the purpose of disposal of this Petition and the Trial Court should not get influenced by the same.

[DR. SHALINI PHANSALKAR-JOSHI, J.]