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WP-2754-2013
(sr. no.10)
Monday, 25.1.2016

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2754 OF 2013

Conros Steels Pvt. Ltd and anr.

.....Petitioners

V/s.

1. Invent Assets Securitisation &
Reconstruction Pvt. Ltd and anr.

.....Respondents

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Ms. Usha Kiran Srivastava i/by. Consulta Juris, Advocate for the
petitioner.

None for respondent no.1.

Mr. Deepak Thakare, APP for State.

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Coram :- Smt. R.P. SondurBaldota, J.

25th January, 2016.

P.C. :-

1). This petition is directed against the order dated 7th December, 2012 by which the Sessions Court partly allowed the Revision Application preferred by the petitioners and original accused no.3 to challenge the order of the trial Court of issuance of process under Section 138 read with Section 141 of the Negotiable Instruments Act. The

Sessions Court allowed the application on behalf of original accused no.3 and dismissed the Revision Application on behalf of the petitioners who are original accused nos.1 and 2.

2). The sole ground on which the petitioners have challenged the order of issuance of process is that, the cheque in question had been issued by the petitioners not to respondent no.1, the original complainant but to a Company by name, M/s. Mashreq Steel India Pvt. Ltd which also holds a Loan Account with respondent no.1. According to the petitioner, since the cheque was not drawn in favour of respondent no.1, it does not assume the position of a “payee” and therefore is not entitled to file proceedings under Section 138 Negotiable Instruments Act.

3). The Courts below have noted that, alongwith the cheque in question M/s. Mashreq Steel India Pvt. Ltd have forwarded the letter dated 19th October, 2011 by which the cheque had been endorsed in favour of the Bank. Whether the directions in the letter amounted to endorsement or not would be a matter of evidence in the trial. In that circumstance, there can be no error in the view of the Courts below as regards the maintainability of the proceedings. The trial Court had issued process against all the three accused persons. The Revision Application has set aside the order of issuance of process against original

accused no.3 on the ground that no vicarious liability can be said to have been extended towards her.

4). The petitioners have relied upon decision of this Court in **M/s. Credential Finance Ltd and Others Versus. State of Maharashtra and Another reported in 2000 (3) Crimes page 430** to submit that respondent no.1 Bank cannot assume the role of a payee. Perusal of the decision cited shows that, the facts therein were entirely different from the facts of the case on hand. In the present proceedings, M/s. Mashreq Steel India Pvt. Ltd had, alongwith the cheque, sent letter giving specific directions to the Bank about endorsement of the cheque. Therefore, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)