

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**WRIT PETITION NO. 3093 OF 2016
WITH
WRIT PETITION NO. 3094 OF 2016
WITH
WRIT PETITION NO. 3097 OF 2016
WITH
WRIT PETITION NO. 3100 OF 2016**

Deepak Sharma ... Petitioner
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Laxmal P. Kanai, Advocate for the petitioner in all the petitions.
Mr. S.R. Agarkar, APP for the respondent/State.
Mr. Maneesh Dixit, Advocate for respondent no. 2 in all matters.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **22nd December, 2016**

P.C.:

These Writ Petitions are preferred by the petitioner/original accused in respect of complaint directing against the order dated 25th June, 2014 passed by the learned Metropolitan Magistrate presiding in 59th Court, Kurla, Mumbai in Case No. 1744/SS/2014 of issuing process under section 138 of Negotiable Instruments Act. In these Writ Petitions, the petitioner further challenged the order dated 29th July, 2016 passed by the learned Sessions Judge, Mumbai in Revision Application No. 255 of 2016 thereby confirming the order of issuance of process issued by the learned Metropolitan Magistrate.

2. At the time of hearing of these Writ Petitions, it is argued by the learned counsel for the petitioner that in the impugned order of issuance of process though the learned Metropolitan Magistrate has mentioned "Read the complaint and verification", the verification was not recorded by the learned Magistrate at the time of issuance of process. Thus, without verification, the process was issued under section 138 of Negotiable Instruments Act, which clearly shows non-application of mind. Further more submissions were made on other issues.

3. The learned counsel for respondent no. 2/original complainant has submitted that in all 8 criminal cases were filed by respondent no. 2 against the accused persons wherein the present petitioner is one of the accused. He pointed out that the verification was recorded in two cases, i.e., in Writ Petition No. 3096 of 2016 and Writ Petition No. 3099 of 2016. The learned counsel further submitted that the complainant was present when he was called for verification, however, he confirms the submissions made by the learned counsel for the petitioner that except the above two matters, in all other matters verification was not recorded by the learned Magistrate, as after taking search of the record of the said cases pending before the learned Magistrate, no such verifications were found.

4. Perused the papers of all these Writ Petitions. The learned counsel

for the petitioner has produced roznama of all the criminal cases. Section 202 of Cr. P.C. states that verification of the complainant is a must and without verification of the complainant, process cannot be issued. So far the proceedings are concerned, in all these matters, process was issued without verifying the complainant. However, the fact is also to be taken into account that at a time, 8 Petitions were filed and process was issued in each one but on the different dates. In two cases, the complainant was examined on oath and verification to that effect is on record. To examine the complainant on oath before issuing the process is strictly a function of the Court. As verification is found in two matters and the parties in all 8 cases are same, it appears that surely due to inadvertence the Magistrate did not examine the complainant on oath and his verification was not recorded in these matters. This omission due to inadvertence cannot render the complainant without remedy and, therefore, I am of the view that all these matters are to be remanded back to the learned Magistrate for examining the complainant on oath in all the respective cases and the learned Magistrate may consider taking of cognizance of the offence and it is to be done till 31st January, 2017.

5. Writ Petitions are disposed of.

(MRIDULA BHATKAR, J.)