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

CRIMINAL APPLICATION NO. 404 OF 2017

Bhilla Dharma Desale & Anr. V/s. Ashok Buildcon Ltd. & Ors.	... Applicants ... Respondents
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WITH

CRIMINAL APPLICATION NO. 405 OF 2017

Bhilla Dharma Desale & Anr. V/s. Ashok Buildcon Ltd. & Ors.	... Applicants ... Respondents
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WITH

CRIMINAL APPLICATION NO. 406 OF 2017

Bhilla Dharma Desale & Anr. V/s. Ashok Buildcon Ltd. & Ors.	... Applicants ... Respondents
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WITH

CRIMINAL APPLICATION NO. 407 OF 2017

Bhilla Dharma Desale & Anr. V/s. Ashok Buildcon Ltd. & Ors.	... Applicants ... Respondents
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Mr. Sachin Gite for Applicants.
Mr. R.S. Apte, Senior Counsel i/b A.A. Garge for Respondent No.1.
Ms. Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.
DATE : 21st NOVEMBER 2017

P.C.:

1] By the aforestated applications under Section 482 of Cr. P.C., the applicants have impugned the Order of issuance of process against them under Section 138 of the Negotiable Instruments Act and for quashing of the criminal complaint filed by the respondent No.1 against them and the respondent No.2 under Section 138 of the Negotiable Instruments Act.

The application numbers, case numbers and the dates of impugned Orders passed by the learned Judicial Magistrate, First Class at Nashik below Exhibit-1 are mentioned herein-below for the sake of brevity:-

<u>APL Nos.</u>	<u>Date of Impugned Order</u>	<u>Case Nos.</u>
404/2017	26.4.2014	3815/2015
405/2017	17.6.2014	3814/2015
406/2017	17.4.2013	3821/2015
407/2017	19.10.2012	3816/2015

2] It is the case of the Respondent No.1-Company that, the applicants towards repayment of their legitimate dues issued cheques in question in favour of respondent No.1 which have been dishonoured on presentation. In the premise the aforesated complaints are lodged.

3] Learned Counsel for the applicants submitted that the applicants are having bonafide defence and the same be taken into consideration while quashing of complaints and quashing of impugned Orders. In support of his contention, he relied upon the decision of the Apex Court in the case of Prabhu Chawla Vs. State of Rajasthan & Anr in Criminal Appeal No.842 of 2016 decided on 5.9.2016. He submitted that the applicant No.1 retired from the service of respondent No.2- namely Niphad Sahakari Karkhana Ltd, Taluka Niphad, District-Nashik on 31.5.2012 and therefore he is not liable for prosecution under Section 138 of the Negotiable Instruments Act. He submitted that since applicant No.1 retired from service on 31.5.2012, he cannot be held responsible for issuance of the said cheques and for the prosecution launched by the respondent No.1 under Section 138 of the Negotiable Instruments Act. He therefore prayed that the proceedings initiated against the respondents and the Order of issuance of process may be quashed and set aside.

4] The record indicates that the applicants are the signatories of the disputed negotiable instruments which are dishonoured. Apart from the said fact, a bare perusal of the complaint would reveal that a strong prima facie case is made out by the complainant therein against the applicants.

Under Section 139 of the Negotiable Instrument Act, there is rebuttal presumption and the same can be rebutted by adducing substantial evidence at the time of trial. At this stage, the Court has to take into consideration the prima facie case made out by the complainant and as noted hereinabove, the complainant has succeeded in making out a strong prima facie case. There is no denial to the fact of issuance of cheques by the applicants. The record indicates that, the Trial Court after taking into consideration the complaint, affidavit-in-support and documents filed on record has passed the impugned Order, thereby issuing process under Section 138 of the Negotiable Instruments Act.

After taking into consideration the aforesaid facts, this Court is of the view that the Trial Court has not committed any error either in law or in facts while issuing process against the applicants.

5] All aforesaid applications therefore are accordingly dismissed.

(A.S.GADKARI, J.)