

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

CRIMINAL WRIT PETITION NO.2963 OF 2017

Smt. Sarita Ranjit Deshmukh ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

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Mrs. Pravina P. Thakkar for the Petitioner.

Mr. M.G. Patil, APP for the Respondent -State.

Mr. Swapnil Ambre i/b. Gunjan Mangla for the Respondent
No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 1st NOVEMBER, 2017.

P.C.:-

The Petitioner herein, who is an accused No.3 has challenged the order dated 12th January, 2017 whereby the learned Sessions Judge, Greater Mumbai dismissed the Revision Application No.294 of 2016 and thereby confirmed the order dated 3rd February, 2016 passed by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai in C.C. No.2668/SS/2015, dismissing the application for recall of process.

2. Heard Mrs. Pravina Thakkar, the learned counsel for the Petitioner and Mr. Swapnil Ambre, the learned counsel for the

Respondent No.2. Perused the records.

3. The Respondent No.2 herein had filed complaint under Section 138 of the Negotiable Instruments Act against the Company and two of its Directors for dishonour of two cheques both dated 28th December, 2013 for Rs.50,00,000/- and Rs.60,00,000/- drawn on Union Bank of India, Amravati.

4. The Respondent No.2-Complainant had claimed that the Petitioner and her husband, who was arraigned as accused No.2 were Directors of accused No.1 Company and that they were incharge of and were responsible for day to day affairs and conduct of the management and business of the Company at the relevant time. The Respondent No.2-Complainant had alleged that despite the statutory notice, the Petitioner had not made the payment and had therefore filed a complaint under Section 138 r/w 141 of the Negotiable Instruments Act. By order dated 7th June, 2014 the learned Judge had issued process against the Petitioner and the other accused for offence punishable under Section 138 r/w. 141 of the Negotiable Instruments Act. The Petitioner herein did not challenge the said order but filed an application dated 19th December, 2015 for recall of process. The

Respondent No.2 contested the said application and by order dated 3rd February, 2016 the learned Magistrate, relying upon the judgment in *Adalat Prasad Vs. Rooplal Jindal and Anr. Manu/SC/0688/2004* dismissed the application mainly on the ground that the Magistrate is not empowered to recall the process. The learned Magistrate also held that the Petitioner herein is a Managing Director of the Company and that there is sufficient material to proceed against the Petitioner herein. The learned Additional Sessions Judge, Greater Mumbai has confirmed the said findings.

5. At the outset it may be mentioned here that the Petitioner had filed an application for recall of process claiming that accused No.1-M/s. Swaroop Autowheels Amravati Private Limited is a proprietorship concern, which statement is apparently wrong and incorrect. Be that as it may, it is well settled that the Magistrate has no powers to recall the order of issuance of process. Hence the application for recall of process itself was not maintainable.

6. The Respondent No.2 had lodged the complaint under Section 138 r/w 141 of the NI Act with specific allegations that the Petitioner herein, who is one of the Directors of the Company was

responsible for the day to day activities of the Company. In the reply to recall of process the Respondent No.2 had specifically stated that the Petitioner is in fact the Managing Director of the Company. The learned counsel for the Petitioner has not been able to dispute the said statement. The averments in the complaint indicate that the cheques issued on behalf of the Company were dishonoured and the amount due was not paid despite statutory notice.

7. The averments made in the complaint, in my considered view disclose necessary ingredients of the offence. Hence, the Petition has no merits and is hereby dismissed.

8. Considering that the complaint is of the year 2014, the learned Trial Judge is directed to proceed with the same as expeditiously as possible.

(ANUJA PRABHUDESSAI, J.)