

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

WRIT PETITION NO. 4196 OF 2017

M/s. MVL Credits Holding & Leasing & Ors.Petitioners
Versus
Karvy Financial Services Limited & Anr.Respondents

**WITH
WRIT PETITION NO. 4197 OF 2017**

M/s. Creative Pools Estate Pvt. Ltd. & Ors.Petitioners
Versus
Karvy Financial Services Limited & Anr.Respondents

**WITH
WRIT PETITION NO. 4198 OF 2017**

M/s. Parisar Property Developers Pvt. Ltd. & Ors.Petitioners
Versus
Karvy Financial Services Limited & Anr.Respondents

Mr. N.K. Thakare i/b. Mr. Ganesh Bhujbal for the petitioners (*in all petitions*)
Mr. Umar Shaikh with Vikas Salvi with Chetan Mendadkar i/b. Vikas Salvi and Associates for respondent no.1 (*in all petitions*)
Mr. M.G. Patil, APP for the State (*in all petitions*)

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 20th NOVEMBER, 2017**

P.C. :

1. The petitioners herein have challenged the order of issuance of

process in C.C.No.1364/SS/2016, C.C.No.1363/SS/2016 & C.C.No. 1362/SS/2016 respectively vide order dated 28th November, 2016 under section 138 of Negotiable Instrument Act.

2. Heard the learned counsels for the respective parties. I have perused the records and considered the submissions advanced by them.

3. Mr. N.K. Thakare, learned counsel for the petitioners submits that they have not challenged the order in revisional / appellate court as he wants to rely upon certain additional documents which cannot be relied upon before the learned Sessions Judge.

4. Mr. N.K. Thakare, learned counsel for the petitioners submits that the petitioners had availed finances to the extent of Rs.5,00,00,000/- (Rupees Five Crores) and that the said undated cheque was given as security. He has further submitted that the statement at 'exhibit-c' reveals that the petitioners had made part payment and that the liability is only Rs.25,00,000/- (Rupees Twenty Five Lakhs). He has further submitted that the learned Magistrate has not taken recourse to the provisions under Section 202 of Criminal Procedure Code.

5. *Per contra*, Mr. Umar Shaikh, learned counsel for the respondents disputes the statement at 'exhibit-c' given by the respondents. He further submits that the petitioners have not paid any amount and that the dues are of Rs.5,00,00,000/- (Rupees Five Crores) are in addition to the interest payable.

6. At the outset, it may be mentioned that in ***Rajul Ketan Raj v/s. Reliance Capital Ltd. & Anr. in Criminal Application Nos.716 to 718 of 2015***, this Court (Coram : Smt. Anuja Prabhudessai, J.) by judgment dated 12th February, 2016, has already taken a view that the provisions of section 202 of Criminal Procedure Code are not applicable to the proceedings under section 138 of the Negotiable Instruments Act.

7. It is also to be noted that the subject cheque is for Rs.5,00,00,000/- (Rupees Five Crores) and was sent by and on behalf of the petitioners. *Prima facie*, the presumption under Section 118 and 119 of Negotiable Instrument Act is in favour of the respondents.

8. Considering the said fact and considering the fact that the respondents have disputed the statement at 'exhibit-c', at this stage, it cannot be said that the loan was only to the extent of Rs.25,00,000/- (Rupees Twenty Five Lakhs). Even otherwise, the defence raised by the petitioners is required to be proved on merits.

9. Under the circumstances, I find no reason to interfere with the order. Hence, the petitions are dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)