IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No.91 OF 2018

Shri Gautam Chaudhari & Anr. … Applicants

Vs.

Brom India & anr. … Respondents

Mr.S.R. Mahajan i/b B.N. Suryawanshi for the Applicants
Mr.Hemang Jariwala i/b Auroma Law for the Respondent No.1
Mrs.Veera Shinde, APP, for Respondent No.2 / State

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: DECEMBER 4, 2018

P.C.:

1. This application under Article 227 of the Constitution of India invoking the writ jurisdiction is directed against the order dated 8.12.2017 passed by the learned Additional Sessions Judge, Greater Mumbai in Revision Application No.892 of 2017 thereby confirming the order of the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai dated 6.6.2017 of issuance of process under section 138 of the Negotiable Instruments Act in C.C. No.296/SS/2017. The only point raised before this Court in this petition is that whether the cheque issued by the applicant/accused dated 10.8.2016 was required to be presented to the bank within a period of 3 months from the date on which it is

drawn. However, it is presented thereafter. Under such circumstances, the issue is whether the order of issuance of process vitiates and bad in law?

2. The learned Counsel for the applicant/accused submitted that the cheque was drawn on 10.8.2016 and it was to be presented within three months i.e., on 9.11.2016. However, as per the stamp on the photocopy of the cheque, the date of clearance is shown as 14.12.2016 of Bank of Baroda, the bank of the complainant. He submits that no evidence is produced before the learned Metropolitan Magistrate showing compliance of section 138A of the Negotiable Instruments Act.

3. Per contra, the learned Counsel appearing for the Respondent/complainant submits that it is correct that the period of three months came to be over on 9.11.2016. However, on the night of 8.11.2016, the Government declared demonitisation policy and, therefore, on the next date, i.e., on 9.11.2016, all the banks were closed. The learned Counsel has further submitted that the said cheque was, therefore, presented on 10.11.2016 and it was accepted by the bank. He relied on the dishonour memo issued by the Bank of Baroda wherein the reasons for dishonouring the

cheque were given as "funds insufficient"; "payment stopped by the drawer". The learned Counsel further pointed out that if the cheque would have been outdated or invalid, then, the objection would have been marked at Serial No.30 i.e., "instrument post-dated/out-dated/undated/without proper date". He supported the order of the learned Metropolitan Magistrate of issuance of process and also the order passed by the learned Sessions Judge dismissing the revision.

4. Heard submissions. Perused section 138A of the Negotiable Instruments Act. Admittedly, the cheque was presented on the next day, after the three months period was over. However, the period of three months is deemed to be extended because of the sudden national policy declared by the government and the banks were declared closed on 9.11.2016 and, therefore, as per the submissions of the learned Counsel for the complainant, the said cheque was presented on the next day, i.e., on 10.11.2016. It is to be noted that if there is a *vis major* or a national calamity or a national strategy or policy declared by the government leading to the closure of the bank(s), then, the period which is mentioned is to be considered as extended and it can be presented on the next

date. Such closure should not come in the way of counting the limitation. Moreover, the photocopy of list of objections which is mentioned in the memo of objections discloses two reasons for dishonouring the cheque. At Serial No.30 in the said memo, in the objections in respect of the validity of the cheque if it is outdated or no proper date is mentioned or if it is undated, the objections in respect of date on the cheque are specifically mentioned. The bank has accepted the cheque and then, it processed the cheque and only thereafter, took objection that the funds are insufficient. This *prima facie* shows that it was presented within time.

5. The points argued by the learned Counsel for the accused that the complainant has not produced any document to show as to when the cheque was presented and it was presented on 10^{th} itself, this can be raised at the time of the trial and the trial Court may consider it at the time of hearing and deciding it finally.

6. Under such circumstances, no interference is required with the impugned orders passed by the learned Metropolitan Magistrate and the Sessions Court. Therefore, the application is dismissed.

(MRIDULA BHATKAR, J.)