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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.501 OF 2018

Mrs.Swapna Pdya ..Petitioner.

V/s.

M/s.Shakti International Pvt. Ltd. & Anr. ..Respondents.

Mr.Rishi Butta with Mr.Manish Bohra i/b. Radha Agrawal for the petitioner.

Mr.Girish Agrawal for respondent No.1.

Mrs.N.S. Jain, APP for the respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : MARCH 14, 2018

PC.:-

Heard respective parties.

2. Against the order of issuance of process for an offence punishable under section 138 of the Negotiable Instruments Act, 1881 ('the N.I. Act' for short) by the learned Metropolitan Magistrate, 59th Court, Kurla, Mumbai in C.C.No.119/SS/2017, the petitioner preferred a Criminal Revision Application No.691/2017 which is dismissed on December 22, 2017 by the learned

Additional Sessions Judge, Greater Bombay. As such, this petition.

3. The learned counsel for the petitioner would invite attention of this Court to the copy of complaint. The offence punishable under section 138 of the N.I. Act is alleged. It appears from record that the present petitioner issued a cheque dated November 28, 2016 for an amount of Rs.6,71,71,356.61 drawn on Andhra Bank, Visakhapatnam Branch towards continuing personal guarantee to the complainant. The said personal guarantee has resulted into the complainant presenting the cheque.

4. It is the defence of the present petitioner that the petitioner ceased to be the director of the company for which she stood personal guarantor with effect from March 26, 2016. It is further claimed that the company of which the petitioner was erstwhile director has assured the complainant to issue / replace the cheque of personal guarantee. He relied upon the communication dated December 14, 2016 so as to substantiate the said contention.

5. The revisional Court dismissed the claim of the present petitioner having noticed that the petitioner had failed to reply to

the statutory notice and the stage at which the revision is being preferred the contentions raised cannot be considered.

6. From the submissions of the learned counsel for the petitioner that out of the same transaction, she and the other directors of the company for whom she stood as a personal guarantor, even a separate proceedings between the company and its guarantors cannot be an issue which can be gone into at this stage of the proceedings and the same virtually amounts to appreciating the defence of the present petitioner.

7. In the backdrop of presumption provided under provisions of the N.I Act, the learned Magistrate is required to proceed on the allegations in the complaint. In the aforesaid backdrop, the order of the Magistrate ordering issuance of process and the order of the revisional Court rejecting the revision does not warrant interference. No case is made out for any interference in the extra-ordinary jurisdiction by this Court. The petition is dismissed.

(NITIN W.SAMBRE, J.)