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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1445 OF 2018
WITH
WRIT PETITION NO. 1447 OF 2018**

1. M/s. Stone Export House Pvt LtdPetitioners
2. Mr. Mehfooz Khana
3. Mrs. Haasina Hasan Choudhary

V/s.

1. Bank of IndiaRespondents
2. The State of Maharashtra

Mr. M. R. Chouhan for the petitioner.
Mr. S. S. Pednekar APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : MAY 2, 2018.

P.C.

The respondent, a nationalized bank, initiated proceedings for offence punishable under section 138 of the Negotiable Instruments Act, 1881 against the petitioners vide complaint no. 294 of 2017 and 295 of 2017 on the file of Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai.

2 The said Court issued process against the petitioners which

was a subject matter of challenge in revision before the learned Sessions Judge. The revisional Court dismissed the claim of the present petitioners for quashing of the order of issuance of process. As such, these petitions.

3 Shri. Chavan, the learned counsel for the petitioners would strenuously urge that notice under section 138 of the Negotiable Instruments Act, 1881 was not received by the petitioners-accused and as such, there was no occasion to put forth the case/defence of the petitioners. According to him, since the mandatory compliances are not made out before the Court, it was incumbent on the part of the courts below to dismiss the complaint. Shri. Chavan then would urge that accused no. 3 to the present case i.e. petitioner no. 3 resigned from the company i.e. accused no. 1 on 15/10/2016. According to him, another director was nominated at the place of accused no. 3. He would draw support from Form no. 11 so as to claim that accused no. 3 is noway responsible for issuance of the cheque in question and cannot be proceeded against.

4 The learned APP appears for respondent no. 2 and supports the impugned orders.

5 Perused the record and documents as are produced along with present writ petitions.

6 Along with complaint, the complainant has produced copy of the notice issued to the petitioners-accused persons which was not claimed/refused by the petitioners-accused. That being so, the Court below, in my opinion, was right in rejecting the contention of the petitioners that the statutory requirement of issuance of notice under the Negotiable Instruments Act, 1881 was not complied with.

7 So far as the next contention of Shri. Chavan, tendering resignation by accused no. 3 i.e. petitioner no. 3 is concerned, the copy of the resignation produced on record does not speak of any acknowledgment thereon so as to infer the date of resignation. Form no. 11, which is sought to be relied upon, though speaks of the date of resignation, however, the said document appears to have tendered

to the Registrar of the Companies along with requisite fees on 02/01/2017. The said act on the part of the petitioners speaks of the petitioner tendering resignation and processing of the same after the date of issuance of cheque.

8 In the aforesaid background, the claim that petitioners cannot be held responsible for vicarious liability, need not call for any appreciation. The perusal of the complaint speaks of all the petitioners were in-charge of business of the accused no. 1 company and in view thereof, I hardly notice any infirmity or material irregularity which warrants interference in the extraordinary jurisdiction.

9 As such, petitions which are devoid of merit, stand dismissed.

[NITIN W. SAMBRE, J.]