

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

WRIT PETITION NO. 1828 OF 2015

Mr. Rajendra Kalicharan Verma & Anr.	... Petitioners
V/s.	
M/s. Anand Industrial Corporation & Ors.	... Respondents

Mr. Rajendra Varma for the Petitioner.
Mrs. M.R. Tidke, APP for the Respondent/State.

CORAM : NITIN W. SAMBRE, J.
DATE : 15th MARCH, 2018

P.C.:

. Heard Adv. Rajendra K. Varma, who is appearing in person, the Applicant No.1 to the present application, who claims to be Proprietor of Applicant No.2 firm. The learned APP for Respondent No.3.

2 Cheque for an amount of Rs.3,25,000/- issued by the Applicant was dishonoured. Criminal Case No. 7744 of 2007 came to be initiated before the learned Magistrate, Pune for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3 Application Exhibit No.59 is moved by the Petitioner before the Magistrate claiming dismissal of the complaint on the grounds;

(a) the Respondent Complainant has practiced fraud on the Applicant as the goods supplied were not in the requisite quantity and the quality;

(b) no legally enforceable debt could be noticed from the contents of the complaint preferred against the Applicant; and

c) the complaint/case is filed against the Applicant with an intention to harass him.

4 The learned Magistrate vide Order impugned dated August 8, 2011 dismissed the said application Exhibit 59, which Order was confirmed in Revision No. 475 of 2011 vide Order dated October 1, 2012 passed by the Additional Sessions Judge, Pune at the behest of Applicant. As such this proceedings questioning both these Orders and the proceeding, initiated before the Magistrate.

5 From the record if the contentions of the Petitioner are to be appreciated, there is a presumption against the Petitioner that the cheque was issued by him for an admitted debt and such presumption is rebuttable. The Petitioner/accused will get a chance to rebut the presumption at the stage of trial.

6 So far as the claim of the Petitioner that the Cheque was issued against the supply of the goods which was not honoured and the proceedings are initiated against him so as to harass him are in the form of his defence which can be looked into at the stage of trial.

7 Keeping the issue open qua the defence to be raised by the Petitioner/Accused before the Trial Court which of course will be appreciated by the Trial Court at the appropriate stage, no case for interference at this stage is made out. With the above observations, the Writ Petition stands dismissed.

(NITIN W. SAMBRE, J.)