

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

WRIT PETITION NO. 1962 of 2019

Nikhil J. Bhandari	]	
Age 30, Occupation : Business	]	
Residing at 13/14, Sagar Kunj,	]	
Nepean Sea Road, Mumbai 400036.	]	... Petitioner

Versus

1. JM Financial Credit Solutions Limited	]	
7 th Floor, Cenercy, Appasaheb Marathe	]	
Marg, Prabhadevi, Dadar (West),	]	
Mumbai 400 025.	]	
2. The State of Maharashtra	]	... Respondents

Mr. Vinit V. Jain, Advocate for the Petitioner.

Mr. Niranjan S. Mundargi, Advocate for Respondent No.1

Mrs. G.P. Mulekar, APP for the State.

CORAM : S. S. SHINDE, J.

RESERVED ON : 2nd July, 2019.

PRONOUNCED ON : 10th July, 2019.

JUDGMENT:

1. Rule. Rule made returnable with the consent of the parties and heard finally.

2. This Petition is filed challenging the order dated 2nd March 2019 passed by the Learned Metropolitan Magistrate's 33rd Court at Ballard Pier, Mumbai in C.C. No. 110/SS/2019.

3. It is the case of the Petitioner that, the Petitioner is arraigned as Accused No.2 alongwith other Accused persons in C.C. No. 110/SS/2019, pending before Court of Metropolitan Magistrate's 33rd Court at Ballard Pier, Mumbai (hereinafter referred to as the Ld. Magistrate). The said proceeding pertains to alleged dishonor of 3 cheque allegedly issued by one m/s Adinath Foundations Private Limited, in favour of Respondent No.2 and alleged non compliance of Demand Notice dated 29th November 2018, as contemplated under Section 138(b) of the Negotiable Instrument Act, thereby alleging the commission of alleged offences punishable under Section 138 r/w 141 of the Negotiable Instrument Act.

4. The learned Counsel appearing for the Petitioner submits that the petitioner is not committed any of the offences alleged in the complaint. The Learned Magistrate Court had passed the Order of issuance of process dated 11-02-2019 in the absence of *prima facie* proof of actual dispatch and service on the Petitioner. The petitioner came to know about the same and appeared before the Court on 2nd March 2019 and applied for bail.

5. It is further submitted that, when the Petitioner appeared before the Court and applied for bail, the Learned Magistrate Court

without hearing the petitioner, nor giving him an opportunity, to put up his case, was directed to deposit 20% of the cheque amount as compensation to the Complainant/Respondent No.2.

6. Learned counsel appearing for the petitioner further invites attention of this Court to the grounds taken in the Petition and submits that while granting bail to the petitioner the learned Metropolitan Magistrate has directed the petitioner to pay 20% of the alleged cheque amount in cash to the complainant. It is submitted that the order passed by the learned Metropolitan Magistrate is not legally sustainable.

7. Learned counsel appearing for the Respondent No.1 submits that this Court may pass an appropriate order.

8. Upon appreciating the rival contentions and without entering upon the merits of the matter, this Court is of the opinion that the order impugned in this petition is not legally sustainable. It appears that the Learned Metropolitan Magistrate directed to pay 20% cash amount to complainant as interim compensation and to record plea. In fact, it is only after recording the plea and if the accused pleads not guilty, in that case the Court can record plea of “not guilty” and then Court can order to deposit 20% of cheque

amount towards interim compensation. The learned Metropolitan Magistrate has passed the following order :

“Order

2/3

Case is filed in 2019.

Bail allowed on PR and Cash of Rs. 5,000/-.

To pay 20% cash amount to complainant as Interim compensation and to Record Plea”

9. It is crystal clear from the aforesaid order that the learned Metropolitan Magistrate ordered to pay 20% cash amount to the complainant as interim compensation and observed to record plea. In the light of discussion herein above the aforesaid order to the extent of “to pay 20% cash amount to complainant as interim compensation and to record Plea” cannot legally sustain and accordingly the impugned order is quashed and set aside, the petition is allowed to above extent and stands disposed of.

9. The learned Metropolitan Magistrate may proceed to pass fresh order in the pending proceeding in C.C. No. 110/SS/2019 in accordance with law and keeping in view the provisions of Negotiable Instrument Act, 1881 and procedure prescribed there under. Rule made absolute on above terms. The Writ Petition stands disposed of accordingly.

(S. S. SHINDE, J.)