

Vidya Amin.

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

CRIMINAL WRIT PETITION NO. 4110 OF 2016

Tejas Upendra Parekh ... Petitioner
VS.
M/s. Ratnadeep Steel Traders & Anr. ... Respondents

Ms. Purvi Shah a/w. Mr. Ashok Yadav, Advocate for the petitioner.
Mr. Mittal P. Vira h/f. P.N. Vira, Advocate for respondent No. 1.
Mrs. M.R. Tidke, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 9th April, 2019**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ
Petition is heard finally and decided at the stage of admission.

2. Leave to amend the prayer. Amendment to be carried out
forthwith.

3. In this Writ Petition, the order dated 25th October, 2016 of
issuance of process under section 138 of Negotiable Instruments
Act in C.C. No. 6334/SS/2016 passed by the learned Metropolitan
Magistrate, Bellard Pier, Mumbai is challenged.

4. The learned counsel for the petitioner has submitted that the challenge is given to the order of issuance of process on the ground that endorsement on the impugned cheque shows that it is void because it was presented after three months and therefore, the cheque was not honoured. She further pointed out that the memo issued by Union Bank of India giving reason of dishonouring the cheque "funds insufficient" is not a signed memo by the officer of the Union Bank of India. The memo appears suspicious so also there is no entry in her statement of account of Punjab and Sind Bank showing that the cheque was presented.

5. The learned counsel for the respondent opposed this prayer in the Writ Petition.

6. Considered the objections raised by the learned counsel for the petitioner/accused. The contentions of the learned counsel for the petitioner/accused cannot be appreciated at the stage of issuance of process or at the stage of trial. Hence, I do not find any good ground to say that the order of issuance of process is illegal. No interference is required in the order of issuance of process.

7. The learned counsel for the petitioner/accused submitted that the petitioner has moved the Application for exemption on 28th March, 2019, as the daughter of the petitioner/accused was hospitalized. The said Application was rejected and the advocate representing the petitioner/accused was not having instructions about recording of plea, however, Non-bailable warrant was issued.

8. The order of Non-bailable warrant is hereby cancelled. The petitioner/accused is directed to appear before the Metropolitan Magistrate Court on 5th July, 2019 at 11 a.m. without fail.

9. Writ Petition is dismissed in respect of issuance of process, however, the prayer of cancellation of NBW is allowed.

(MRIDULA BHATKAR, J.)