

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1165/2018

Bhavya Sehra (Company Secretary) & ors.

..VS..

State of Maharashtra & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.K. Bhangde, Advocate for the applicant(s)
Ms. T.H. Khan, APP for the non-applicant no. 1

CORAM : Z.A.HAQ, J.

DATED : 08/01/2019

Heard.

By this application under Section 482 of the Code of Criminal Procedure, the accused have challenged the order passed by the learned Magistrate directing issuance of process against them for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned advocate for the applicants has pointed out the document at page 58 of the paperbook and the orders passed by the National Company Law Tribunal Chandigarh Bench, Chandigarh on 20/12/2017 and 22/12/2017 and has argued that before the cheque on the basis of which the proceedings under Section 138 of the Act of 1881 are filed, was dishonored, the proceedings under the Insolvency and Bankruptcy Code, 2016 were initiated before the National Company Law Tribunal, the Board of Directors of the Company came to be suspended, the management of the affairs was vested with the Interim Resolution Professional, and the officers and the managers of

the “Corporate Debtor” were directed to report to the Interim Resolution Professional. Relying on these facts, it is submitted that the learned Magistrate cannot take cognizance of the complaint filed by the non-applicant no. 2 and the impugned order is unsustainable.

The submission made on behalf of the applicants cannot be accepted. At the stage of issuance of process, the learned Magistrate has to examine the complaint, the documents placed on record by the complainant and the verification of the complaint by the complainant. Only because the accused have some defence, it cannot be said that the order directing issuance of process is illegal and unsustainable. The matter will have to be examined by the learned Magistrate at appropriate stage.

In the facts of the case, I see no reason to interfere with the impugned order.

The criminal application is **dismissed**. No costs.

JUDGE

Ansari