

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO.2035 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2036 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2037 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2038 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2039 OF 2019
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CRIMINAL WRIT PETITION NO.2040 OF 2019
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CRIMINAL WRIT PETITION NO.2041 OF 2019
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CRIMINAL WRIT PETITION NO.2042 OF 2019
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CRIMINAL WRIT PETITION NO.2043 OF 2019
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CRIMINAL WRIT PETITION NO.2044 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2045 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2046 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2047 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2048 OF 2019
WITH
CRIMINAL WRIT PETITION NO.2049 OF 2019**

**BALAJI IRON AND STEEL INDUSTRIES
PRIVATE LIMITED**

V/s.

THE STATE OF MAHARASHTRA & ANR.

)

)...PETITIONER

)...RESPONDENTS

Mr.Siddhesh Bhole a/w. Mr.Abdulla Cutlariwala i/b. Haresh Jagtiani and Associates, Advocate for the Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent – State.

Mr.Pradosh Patil i/b. Lex Juris, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 24th FEBRUARY 2020

P.C. :

1 All these writ petitions are challenging the revisional order passed by the learned Sessions Court, Mumbai, thereby confirming issuance of summons for offences punishable under Sections 138 and 141 of the Negotiable Instruments Act in identical complaints filed by respondent no.2 herein/original complainant.

2 Heard the learned counsel appearing for the petitioner/original accused. By drawing my attention to the application under Section 156(3) of the Code of Criminal Procedure (hereinafter referred to as the Cr.PC. for the sake of

brevity) filed by contesting respondent/original complainant, the learned counsel argued that in the said application stand of the contesting respondent/original complainant is to the effect that blank cheques were given at the time of Supply Agreement dated 14th July 2015. As against this, according to the learned counsel for the petitioner/original accused, subject complaints for the offence punishable under Section 138 of the the Negotiable Instruments Act mentions that subject cheques were given after the original complainant/contesting respondent herein repeatedly demanded the outstanding amount. In the complaints for the offence punishable under Section 138 of the the Negotiable Instruments Act, it is averred that cheques handed over were for part payment of goods supplied by the complainant. This fact pleaded in the complaint is totally contrary to pleadings in the application under Section 156 of the Cr.P.C. Therefore, according to the learned counsel for the petitioner/original accused, interference at the hands of this court in exercise of jurisdiction under Section 482 of the Cr.P.C. is must. Similarly, it is argued that interest at the rate of 24% per annum is pleaded in the plaint

for the offence punishable under Section 138 of the the Negotiable Instruments Act. However, this claim is totally outside the purview of Supply agreement dated 14th July 2015 and on this count also, summons issued needs to be quashed and set aside. The claim is for unascertained debt, and therefore, provision of Section 138 of the the Negotiable Instruments Act is not attracted to the case in hand. It is also urged that pleadings in the complaint show that supply took place on 17th December 2014 and 18th December 2014 whereas the Supply Agreement was dated 14th July 2015. All these factors, according to the learned counsel for the petitioner/original accused, vitiate the complaint for the offence punishable under Section 138 of the the Negotiable Instruments Act.

3 The learned counsel appearing for the contesting respondent/original complainant drew my attention to the revisional order and submitted that triable issues are raised and as those can be settled during the trial, the order of summons is not required to be interfered with, at this stage.

4 I have considered the submissions so advanced and also perused the material placed before me. What is sought to be contended is the defence of accused persons which needs to be agitated during trial of the complaints. Prima facie, perusal of the complaints depicts commission of the offence punishable under Section 138 of the the Negotiable Instruments Act.

5 No case for interference in extraordinary jurisdiction of this court is made out, and therefore, the following order :

ORDER

Petitions are rejected.

(A. M. BADAR, J.)

Arti V.
Khatate

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by Arti V.
Khatate
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