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

**WRIT PETITION NO.115 OF 2022
WITH
WRIT PETITION NO.116 OF 2022
WITH
WRIT PETITION NO.120 OF 2022**

Nilesh Yashwant Patil ... Petitioner
V/s.
The State of Maharashtra & Anr. ... Respondents

Ms. Manpreet Kaur i/by Falcon Legal for the petitioner.

Mr. A.R. Patil, APP for respondent no.1/State.

Mr. Moinuddin Khan for respondent no.2.

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CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2022

P.C.:

1. Since all these three (3) writ petitions arise out of similar questions of fact and law, all three (3) writ petitions are being disposed of by this common judgment.

2. Respondent no.2 in each petition filed complaint under section 138 of the Negotiable Instruments Act, 1881 alleging that the complainant had paid various amounts to the petitioner by cash and by cheque, details of which are mentioned in the complaint. It is alleged that the payment was made in pursuance of

the transactions of purchase of flat which cannot be fructified and, therefore, towards repayment of payment made by the complainant the petitioner has issued cheque in favour of the complainant which was dishonored. The complainant demanded the amount by issuing statutory notice but in spite of receipt of notice the amount was not repaid and, therefore, the complainant filed complaint under section 138 of the Negotiable Instruments Act, 1881.

3. Learned advocate for the petitioner submitted that there was no transaction of sale of flats in favour of the complainant. The amount as alleged in the complaint was never received by the petitioner and, therefore, there is no legally enforceable liability. It is submitted that there is no proof submitted before the learned Magistrate before issuance of process.

4. Having perused the averments in the complaint, it appears that the complainant has given specific details of the transactions entered into between the complainant and respondent no.2. The fact of issuance of cheque is not disputed, but according to the petitioner the said cheque was issued as and by way of security. If the issuance of cheque is not disputed, whether the cheque was issued for enforcement of legally recoverable liability or not is a question which has to be tried by the learned Magistrate at the time of trial of complaint under section 138. At the stage of issuance of process under section 202 of the Criminal Procedure Code, the learned Magistrate is expected to hold an inquiry into *prima facie* averments in the complaint and witnesses, if any present on the date of issuance of instrument. In the facts of the

case, except raising issue of legally enforceable debt, no other issue has been raised.

5. In that view of the matter, the order of issuance of process cannot be faulted. The learned revisional Court has given detailed reasons as to why interference under section 397 is not called for which does not warrant interference under Article 227 of the Constitution of India.

6. The petitions are, therefore, dismissed. No costs.

(AMIT BORKAR, J.)