

AGK

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

WRIT PETITION NO.724 OF 2019

Sakthivadivel Ravindran & Anr. ... Petitioners
V/s.
Nitin Sadashiv Ganatra & Anr. ... Respondents

**WITH
WRIT PETITION NO.725 OF 2019**

Rajave Textiles Pvt. Ltd. ... Petitioner
V/s.
Nitin Sadashiv Ganatra & Anr. ... Respondents

Mr. Santosh Avhad i/by Jayakar & Partners for the
petitioners.

Mr. Aviraj S. Tarar for the respondent no.1.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2022

P.C.:

1. The accused in the proceedings under section 138 of the Negotiable Instruments Act, 1881 is challenging the order passed by the revisional Court confirming the order of issuance of process issued against him.

2. The principal contention raised on behalf of the petitioner is that the petitioner has paid Rs.10 lakh on 27th May 2015, Rs.5 lakh on 9th June 2015 and Rs.10 lakh on 15th June 2015. According to

him, the amount of cheque is Rs.15 lakh and, therefore, there was no legally recoverable liability on the date of commission of offence and, therefore, the order of issuance of process against the accused is liable to be quashed and set aside.

3. According to the learned advocate for the complainant, the total amount due from the accused is to the tune of Rs.43,01,154/-. He, therefore, submits that part payment of the total recovery is not sufficient to extinguish legally recoverable liability of the accused and, therefore, the learned Magistrate has rightly issued process against the petitioners.

4. Having perused the complaint, it appears that the complainant in paragraph 9 has specifically stated that the accused is liable to pay an amount of Rs.43,01,154/-. The amount of cheque is Rs.15 lakh. Even if it is assumed, subject to proof, that the accused has paid amount of Rs.25 lakh, still it fall short of the amount as alleged in the complaint. Whether the amount of Rs.25 lakh has been paid by the accused and the exact amount of legally recoverable debt needs to be ascertained at the stage of trial. No other point is urged.

5. According to the learned advocate for the accused, the fact of amount of Rs.25 lakh has been suppressed by the complainant. In my opinion, his submission can be considered by the learned Magistrate at the time of trial and cannot be a ground for quashing the order of issuance of process.

6. There is no error of jurisdiction nor perversity. There is no merit in the writ petitions.

7. Both the writ petitions are, therefore, dismissed. No costs.
8. Since the ad-interim relief granted in favour of the petitioner is operative for over four (4) years, the same is continued for a period of four (4) weeks from today.

(AMIT BORKAR, J.)