

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

CRIMINAL WRIT PETITION NO. 1332 OF 2020

Datta Industries
Through Prop. Anuradha Vinayak Aadnaik ...Petitioner
Versus
Atul Machinery Through
Prop. Ravindra Rajaram Powar And Anr. ...Respondents

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Mr. Ashok M. Saraogi i/by Mr. Ankit Upadhyay i/by Mr. Shshil Kumar S.
Upadhyay, Advocate for the Petitioner.

Mr. Rahul P. Kasbekar, Advocate for Respondent No.1.

Mr. M. G. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 15th SEPTEMBER, 2022.

PER COURT:

1. The petitioner is prosecuted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881. The process was issued by order dated 04.04.2019. The petitioner had challenged the process order before the Sessions Court by preferring Criminal Revision Application No.88 of 2019 which has been rejected by order dated 11.11.2019.

2. Learned Advocate for the applicant submitted that there are several infirmities in the proceedings. The order of process was issued mechanically. There is non-compliance of statutory provisions of Section 138 of Negotiable Instruments Act, 1881.

The demand notice is not served upon the accused. The petitioner had filed a complaint about theft of the articles including the cheques in question much prior to dishonour the said cheques. The reply relied upon by the complainant was not forwarded by the accused which is evident from the fact that, as per the averments in the complaint, the notice was served upon the petitioner on 6th March, 2019 and the purported reply is dated 5th March, 2019.

3. Learned Advocate for respondent No.1/complainant submitted that there is compliance of the provisions of Section 138 of Negotiable Instruments Act, 1881. The submissions advanced by the counsel for the applicant are on the nature of his defence cannot be considered at this stage.

4. I have perused the complaint and the documents which are placed on record. The averments in the complaint refers to the issuance of cheques by the accused regarding alleged liability. Learned Magistrate had issued process considering the material on record. The Revision Application was rejected by the Sessions Court.

5. On perusal of the documents it can be seen that the issues urged by the petitioner are disputed questions of fact which are required to be adjudicated during the trial.

6. At this stage, learned counsel for petitioner submitted that the non-bailable warrant issued against the petitioner may be set aside. The next date before the trial Court is tomorrow i.e. on 16th September, 2022 and time may be granted to appear before the trial Court. The petitioner is lady. She would appear before the trial Court on 27th September, 2022. Trial may be expedited.

7. Learned counsel for Respondent submits that the petitioner/accused shall cooperate in expeditious disposal of proceedings.

ORDER

- i. Writ Petition No.1332 of 2020 is dismissed and disposed off.
- ii. Trial is expedited.
- iii. The trial Court is requested to make and endeavour to conclude the trial within a period of six months.
- iv. Non-bailable warrant issued against the petitioner in S.C.C. No. 569 of 2019 is set aside.
- v. The petitioner be exempted from appearing before trial Court on 16th September, 2022.
- vi. The trial Court shall list the matter on 27th September, 2022. Petitioner shall appear before the trial Court on 27th September, 2022.
- vii. The trial Court shall proceed in accordance with law.

(PRAKASH D. NAIK, J.)