

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

WRIT PETITION NO. 838 OF 2022

1. Rajabhau Babasaheb Shinde
Age 52 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

2. Pratibha Rajabhau Shinde
Age 46 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

...Petitioners

Versus

1. Kanayalal Rewachand Mirani
Substituted by Mahma Kiran Merani
Age 63 Years, Indian Inhabitant
Proprietor of M/s. K. Copper Products
Having address at
H/4 Cama Industrial Estate, Opp. Mehta House
Walbhat Road, Goregaon (E) Mumbai 400 063.

2. M/s. TRANS-FEB POWER INDIA PVT. LTD.
a Pvt. Ltd. Company Incorporated under India+
Company Act, Carrying on business at
Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

3. The State Of Maharashtra

...Respondents

**WITH
WRIT PETITION NO. 839 OF 2022**

1. Rajabhau Babasaheb Shinde
Age 52 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.
2. Pratibha Rajabhau Shinde
Age 46 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

...Petitioners

Versus

1. Kanayalal Rewachand Mirani
Substituted by Mahma Kiran Merani
Age 63 Years, Indian Inhabitant
Proprietor of M/s. K. Copper Products
Having address at
H/4 Cama Industrial Estate, Opp. Mehta House
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a Pvt. Ltd. Company Incorporated under India
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Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

3. The State Of Maharashtra

...Respondents

**WITH
WRIT PETITION NO. 843 OF 2022**

1. Rajabhau Babasaheb Shinde
Age 52 Years, Adult, Occupation – Business

A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

2. Pratibha Rajabhau Shinde
Age 46 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

...Petitioners

Versus

1. Kanayalal Rewachand Mirani
Substituted by Mahma Kiran Merani
Age 63 Years, Indian Inhabitant
Proprietor of M/s. K. Copper Products
Having address at
H/4 Cama Industrial Estate, Opp. Mehta House
Walbhat Road, Goregaon (E) Mumbai 400 063.
2. M/s. TRANS-FEB POWER INDIA PVT. LTD.
a Pvt. Ltd. Company Incorporated under India
Company Act, Carrying on business at
Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

3. The State Of Maharashtra

...Respondents

**WITH
WRIT PETITION NO. 840 OF 2022**

1. Rajabhau Babasaheb Shinde
Age 52 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,

Pune (MS) – 411 038.

2. Pratibha Rajabhau Shinde
Age 46 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

...Petitioners

Versus

1. Rakhi Kanayalal Mirani
Age 38 Years, Indian Inhabitant
Proprietor of M/s. K. Copper Products
Having address at
H/4 Cama Industrial Estate, Opp. Mehta House
Walbhat Road, Goregaon (E) Mumbai 400 063.
Through its C.A. Mahima Merani
2. M/s. TRANS-FEB POWER INDIA PVT. LTD.
a Pvt. Ltd. Company Incorporated under India
Company Act, Carrying on business at
Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

3. The State Of Maharashtra

...Respondents

**WITH
WRIT PETITION NO. 841 OF 2022**

1. Rajabhau Babasaheb Shinde
Age 52 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.
2. Pratibha Rajabhau Shinde
Age 46 Years, Adult, Occupation – Business

A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

...Petitioners

Versus

1. Rakhi Kanayalal Mirani
Age 38 Years, Indian Inhabitant
Proprietor of M/s. K. Copper Products
Having address at
H/4 Cama Industrial Estate, Opp. Mehta House
Walbhat Road, Goregaon (E) Mumbai 400 063.
Through its C.A. Mahima Merani
2. M/s. TRANS-FEB POWER INDIA PVT. LTD.
a Pvt. Ltd. Company Incorporated under India
Company Act, Carrying on business at
Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.
3. The State Of Maharashtra ...Respondents

**WITH
WRIT PETITION NO. 842 OF 2022**

1. Rajabhau Babasaheb Shinde
Age 52 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.
2. Pratibha Rajabhau Shinde
Age 46 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,

Pune (MS) – 411 038.

...Petitioners

Versus

1. Rakhi Kanayalal Mirani
Age 38 Years, Indian Inhabitant
Proprietor of M/s. K. Copper Products
Having address at
H/4 Cama Industrial Estate, Opp. Mehta House
Walbhat Road, Goregaon (E) Mumbai 400 063.
Through its C.A. Mahima Merani
2. M/s. TRANS-FEB POWER INDIA PVT. LTD.
a Pvt. Ltd. Company Incorporated under India
Company Act, Carrying on business at
Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

3. The State Of Maharashtra

...Respondents

**WITH
WRIT PETITION NO. 844 OF 2022**

1. Rajabhau Babasaheb Shinde
Age 52 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.
2. Pratibha Rajabhau Shinde
Age 46 Years, Adult, Occupation – Business
A Director of
M/s. Trans-FEB Power India Pvt. Ltd.
having address at Flat No. E-23, S.N. 89/90,
Shri Suvaran Apartment, Paud Road, Kothrud,
Pune (MS) – 411 038.

...Petitioners

Versus

1. Rakhi Kanayalal Mirani
Age 38 Years, Indian Inhabitant

Proprietor of M/s. K. Copper Products
Having address at
H/4 Cama Industrial Estate, Opp. Mehta House
Walbhat Road, Goregaon (E) Mumbai 400 063.
Through its C.A. Mahima Merani

2. M/s. TRANS-FEB POWER INDIA PVT. LTD.
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Flat No. E-23, S.N. 89/90,
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Pune (MS) – 411 038.

3. The State Of Maharashtra ...Respondents

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Mr. Pramod N. Patil with Mr. Ajit Hon with Mr. Shamsundar Solanke
i/by PNP & Associates, for the Petitioners.

Ms. Divya Parmar, Advocate for Respondent No.1.

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

CORAM : PRAKASH D. NAIK, J.
DATE : 21st JUNE, 2022.

PER COURT:

1. The Petitioners in all these petitions has challenged the order dated 15th February, 2022 passed by the Sessions Court, Borivali Division, Dindoshi in Criminal Appeals to the extent that it directs the Petitioners to deposit 20% of the compensation amount within 60 days.

2. The Petitioners were tried for offence under Section 138 of Negotiable Instruments Act, 1881 in respective complaints. Vide

judgment and order dated 16th December, 2021, the Petitioners were convicted for offence punishable under Section 138 of Negotiable Instruments Act, 1881 and sentenced to suffer imprisonment of six months and to pay double the amount of cheque in question with simple interest at 9% per annum. The Petitioners have preferred an appeal before the Sessions Court challenging the judgment of conviction. The Sessions Court vide order dated 15th February, 2022 suspended the substantive sentence of imprisonment until the decision of appeal; with direction to deposit 20% compensation amount within a period of sixty days. The prayer for dispensing with the deposit of 20% of the compensation was rejected.

3. Learned Advocate for the Petitioners submitted that the judgment of trial Court convicting the Petitioners suffers from serious infirmities. The Petitioners have good case on merits. The appeal preferred by the Petitioners has been admitted and substantive sentence of imprisonment has been suspended. The Petitioners had preferred an application for dispensing with the deposit of 20% of compensation of which application has been rejected by the Appellate Court. Statement of the accused was not recorded under Section 313 of Cr.P.C. which is requirement of law. The Petitioners were convicted without giving an opportunity to the

Petitioners to tender explanation under Section 313 of Cr.P.C. The cheques in question were given by way of security. The trial Court has not assigned any reasons for awarding the compensation of double the amount. The cheques were misused by the complainant winding up the petitions were filed by the Respondents in 2010 which were dismissed by this Court by observing that the cheques were not in discharge of any legal liability but were given as security. The appeal pending before the Sessions Court will have to be remitted back to the trial Court for not following due process of law. The petitioners were deprived of right of cross examination. The impugned judgment of the trial Court is not sustainable in law. In the order dated 2nd February, 2016, passed by this Court in Company Petition No. 328 of 2011 it is recorded that the cheques were issued by way security. The statement made in the Company Petition that the goods were accepted by the Petitioners without any demur regarding quality and quantity is false to the knowledge of the complainant. The Petitioners had raised serious objections on quality and quantity. The findings of the learned single judge of this Court in order dated 2nd February, 2016 were confirmed by the Division Bench and in Special Leave Petition before the apex Court, the Special Leave Petition was withdrawn. The National Company Law Tribunal, Mumbai had admitted the petition filed against the

complainant-Company and issued order of moratorium under Section 14 of I & B. Act.

4. Learned counsel for Respondent Nos.1 submitted that the grounds urged by the Petitioners are devoid of merits. The merits of the appeal cannot be considered at this stage. It is submitted that the petitions are misconceived and not maintainable. The complaint was filed for offence under Section 138 of Negotiable Instruments Act, 1881. The Petitioners are directors of the accused – Company. The trial was concluded on 16th December, 2021 and the accused were convicted. Non bailable warrants and conviction warrants were issued by learned Magistrate. The Respondent No.1 has filed Revision application for enhancement of sentence. On 16th January, 2012 the respondent No.1 filed affidavit of evidence. On 30th January, 2012 the documents were marked and Exhibited and the cross examination of complainant commenced. The accused kept on delaying the trial. Till 2019, the accused did not conduct cross examination. The trial was delayed by them. On 7th September, 2012 the Petitioners moved an application for discharge. The application was rejected by order dated 22nd March, 2013. The said order was challenged by Petitioners by preferring Criminal Revision before the Sessions Court. The revision applications were dismissed on 28th February, 2014. During the

pendency of revision application the matter was sent for mediation, however, the mediation had failed. The revision applications were rejected. In the year - 2014 the Petitioners moved an application for returning the complaint. The said application was rejected on 7th November, 2014. Repeated adjournments were sought on one or the other pretext. The Petitioners preferred an application on 20th May, 2015 for De-exhibiting the documents. The application was rejected on 28th August, 2015. Applications were moved for repeated adjournments. On 18th May, 2018 affidavit of evidence of Mrs. Mahima Mirani was filed. The affidavit of Respondent No.1 consisted of amended purchase orders of accused, goods received notes, communications received under RTI from office of Income Tax, Central Excise etc. The accused moved an application objecting the affidavit of complainant and Respondent No.1. The application was rejected on 12th March, 2019. On 14th May, 2019, the accused moved an application for adjournment. The said application were disposed of on 14th May, 2019. The learned Magistrate in order dated 14th May, 2019 had observed that complaint is filed in 2011. After filing the examination in chief affidavit, the accused had tried to prolong the matter on one count or other. The accused was directed to keep his well instructed Advocate present on the next date and complete cross examination

of PW-1. Failure of accused to complete the cross examination on next date on any count will result in accused paying cost of Rs.2,000/- per day to the witness of complainant from next date till the completion of cross of that witness. If the accused fails to pay cost for three consecutive days, will result in passing no cross order against the accused. On 15th July, 2019, the Petitioners did not pay cost to Respondent No.1. Thereafter, the cost was paid on 21st September, 2019. On 15th November, 2019, the accused had filed an application for adjournment which was rejected. No cross order was passed on evidence of PW-1. The complainant filed evidence closing pursis. The order of 'No cross' was not challenged. The matter was posted for statement of accused under Section 313 Cr.P.C. The cross examination of complainant had commenced on 30th January, 2012 and in no cross order was passed after eight years, after giving ample opportunities to the Petitioners to carry on with the cross. The Petitioners moved several applications to prolong the trial. On 10th January, 2020 both the Petitioners were absent inspite of knowing fully well that the matters were posted for recording statement under Section 313 of Cr.P.C. At the same time accused were attending other proceedings. The documents relating to winding up petition have no bearing on present proceedings. The complainant had already submitted relevant

documents before trial Court in Affidavit of Evidence.

5. The Petitioners have issued Cheques towards legally enforceable debt. The Petitioners are directors of Company. The scope and object of Section 148 of Negotiable Instruments Act has to be considered.

6. Learned counsel for Respondent No.1 has relied upon decisions in the case of Surinder Singh Deswal and others V/s. Virender Gandhi and Others AIR 2020 SC 415; order dated 16th December, 2019 passed by this Court in Criminal Writ Petition No.4822 of 2019; order passed by this Court in Criminal Application No.136 of 2019 on 17th December, 2019; order dated 22nd December, 2021 passed by this Court in Writ Petition No.6131 of 2021 and various other orders.

7. The appeals preferred by the Petitioners is pending before the Sessions Court challenging the judgment of conviction. The submissions of the Petitioners about the merits of the case will have to be urged during the hearing of appeal. From the documents on record it appears that the complaint was filed for offence punishable under Section 138 of Negotiable Instruments Act, 1881 in the year – 2011. The affidavit of evidence was filed by the complainant on 30th January, 2012 and the case was pending

before the trial Court for cross examination. By order dated 14th May, 2019, the trial Court has observed that after filing of examination-in-chief, the accused have tried to prolong the matter on one or the other count. The accused was directed to keep his presence on the next date and complete the cross examination. The accused were directed to pay cost of Rs.2000/- per day to the witness. If the accused failed to pay the cost for next three consecutive dates, the case will result in passing order of no cross against the accused. By order dated 15th November, 2019, the application was rejected as accused failed to comply order dated 14th May, 2019. It was also observed that the application is presented by the person who is not authorized. The record indicate that the trial Court had proceeded with the matter in the circumstances prevailing in the proceedings. The order of no cross were passed in light of the non co-operation of the accused. The Court proceeded to further stage of trial without recording statement under Section 313 of Cr.P.C. as accused did not remain present. Section 148 of Negotiable Instruments Act, 1881 has been incorporated with purpose. The documents relied by Petitioners cannot be appreciated at this stage. The issue was regarding illegality in the impugned judgments of conviction would be subject matter of appeals which would be heard on merits. Prima facie the

trial Court was constrained to pass order of 'No Cross' and record statement under Section 313 Cr.PC. Since appeal against convictions are pending it would not be appropriate to elaborate further on merits of appeal. No case is made out for setting aside the orders passed by the Sessions Court rejecting the application for dispensing with 20% compensation. It is clarified that since the appeals preferred by the Petitioners is pending, the observations made in this order are for adjudicating the issue involved in this petition.

8. Hence, I pass the following order:

ORDER

- i. All the criminal Writ Petitions are dismissed.
- ii. Time to deposit amount in accordance with the order of subordinate Court is extended by a period of sixty days from today;
- iii. Hearing of appeals is expedited.

(PRAKASH D. NAIK, J.)