

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1981 OF 2022**

Anal Ramesh Soni ...Petitioner
Versus
The State of Maharashtra and Anr. ...Respondents

....

Mr. Suhail Shariff a/w Sameer Shariff, Manpreet Kaur i/by
Falcon Legal Advocate for the Petitioner.
Mr. Arfan Sait, APP for the Respondent – State.

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

PER COURT:

1. The petitioner is prosecuted for offence under Section 138 of the Negotiable Instruments Act. The order of process dated 3rd October, 2018 was challenged before the Sessions Court by preferring revision application. The said revision application has been rejected by the Sessions Court vide order dated 31st December, 2021.

2. The complaint is filed by respondent No.2 alleging that, complainant is proprietress of M/s. S. M. Enterprises. Accused is proprietor of Vidya Press and Vidya Bharati. Friendly loss of Rs.9,00,000/- was advanced to accused by cheque dated 27th August, 2013. Accused issued cheque dated 12th March, 2018. The cheque was dishonored

3. Learned Advocate for petitioner submit that, the petitioner

had received legal notice under Section 138 of Negotiable Instruments Act, dated 31st March, 2018 demanding Rs.9,50,000/- towards cheque dated 12th March, 2018. The notice was issued at the instance of M/s. S.M. Enterprises. The claim in the notice was false. The petitioner lodged complaint dated 11th April, 2018 against respondent No.2, complaining theft of cheque book and forgery. The petitioner replied the notice by reply dated 19th April, 2018. The respondent No.2 redeposited the cheque and issued another notice dated 8th June, 2018. Earlier the reason for dishonor was referred to drawer and on the second occasion it was drawer's signature not as per mandate". The petitioner replied the notice. The bank account was closed by petitioner's firm on 28th June, 2017. The petitioner did not borrow money from M/s. S.M. Enterprises nor signed or issued alleged cheque. The complaint is false.

4. The cheque was dishonored. The first demand notice is dated 31st March, 2018. The second notice is dated 8th June, 2018. In the second notice it is clarified that, in the first notice it is inadvertently mentioned that M/s. Enterprises is partnership firm, instead of proprietorship concern. The grounds urged by petitioner cannot be appreciated at this stage. It is based on disputed questions of facts.

5. The Sessions Court has dismissed the revision appreciations by assigning reasons. The Sessions Court has observed that, prima facie evidence as available for issuance of process. The complaint of theft is the defence of accused. Documents and defence of accused cannot be taken into consideration at this stage of process. The accused failed to point out that allegations made in complaint does not disclose the essential ingredients of an offence under Section 138 of Negotiable Instruments Act against him.

6. I do not find any illegality in the order of process and order passed by Sessions Court. The complaint makes out offence. The ground of theft of cheque and grounds urged by petitioner would be matter of evidence. At this stage process cannot be set aside on such grounds.

7. There is no reason to deviate from the observations made by the Sessions Court. The submissions urged by the petitioners are in the nature of defence. Hence, no case is made out to entertain this petition. The same stands rejected and disposed of.

(PRAKASH D. NAIK, J.)