

AGK

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

CRIMINAL APPLICATION NO.737 OF 2021

Mahesh Ramanlal Sheth ... Applicant
V/s.
Kanu Manilal Thakkar & Anr. ... Respondents

Mr. Mahesh Ramanlal Sheth with Mr. Ishaan Patkar
and Ms. Jindagi Shah i/by Alaksha Legal for the
applicant.

Mr. Dinesh P. Guchiya for respondent no.1.

Mr. A.D. Kamkhedkar, APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 17, 2022

P.C.:

1. The applicant who is original accused no.5 in a proceeding under section 138 of the Negotiable Instruments Act, 1881 has challenged order of issuance of process dated 3rd December 2015 passed by the learned Metropolitan Magistrate, 50th Court at Vikhroli, Mumbai in C.C. No.889/SS/2015. The principle ground of challenging the order of issuance of process is the fact that the petitioner resigned on 26th April 2012 whereas the cheque in question is dated 25th February 2015. To prove the said fact, the petitioner has produced unimpeachable document in the form of DIR-11 which is the notice of resignation of director to the Registrar pursuant to proviso to section 168 of the Companies Act,

2013. On perusal of the said form, it appears that the applicant had resigned on 26th April 2012. Apart from the said fact, it appears that the applicant was independent director.

2. The cheque appears to be dated 25th February 2015 and, therefore, on the date of accrual of cause of action the applicant was not the director of the accused/company. Hence, following order:

The order of issuance of process against the applicant dated 3rd December 2015 passed by the learned Metropolitan Magistrate, 50th Court at Vikhroli, Mumbai in C.C. No.889/SS/2015 is quashed and set aside *qua* applicant only.

3. The criminal application is disposed of in above terms. No costs.

(AMIT BORKAR, J.)