

VRJ

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

CRIMINAL WRIT PETITION NO.3634 OF 2022

Bharatbhai J. Goyani and Anr.

...Petitioners

V/s.

The Nashik Merchant Co.Op Bank Ltd. And Anr.

...Respondents

Mr. Anuj Tiwari, for the petitioners.

Ms. G.P. Mulekar, APP for the State.

CORAM : AMIT BORKAR, J.

DATE : OCTOBER 6, 2022

P.C.:

1. By the impugned order dated 1st August, 2022, the learned Magistrate has rejected application under Section 311 of Code of Criminal Procedure, 1973.

2. The petitioners are the original accused in a complaint under Section 138 of Negotiable Instrument Act, a complaint was instituted by respondent No.1 in the month of September, 2016. It appears from the averments in the complaint, that the loan in question was sanctioned on 17th October, 2014. The said loan was term loan to be repaid on or before 18th January, 2022, subject to the conditions. It is also averred that towards repayment of the said loan, the said cheques in question were issued.

3. The petitioner on 24th June, 2022, filed an application under Section 311 of Code of Criminal Procedure, 1973, stating that he wants to examine himself to bring on record letter dated 18th December, 2014. According to him, the said letter was acknowledging the fact of handing over of the cheques. According to him, his defence is that he has not signed the cheques in question.

4. On perusal of the averments in the complaint, it is the case of the complainant that the loan was sanctioned on 14th October, 2014. Since it is the case of complainant that towards repayment of the said, loan the cheques were issued. In my opinion, the evidence sought to be adduced by the petitioner by filing application under Section 311 of Code of Criminal Procedure, 1973 is not necessary for just decision in the complaint.

6. In that view of the matter, the Magistrate was justified in rejecting the Application neither there is error of jurisdiction nor impugned order has resulted in the miscarriage of justice.

7. The Petition is therefore disposed of.

(AMIT BORKAR, J.)