

Ghuge

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

**CRIMINAL APPLICATION NO.1008 OF 2022**

|                               |                 |
|-------------------------------|-----------------|
| Rita Vinay Thapar             | ... Applicant   |
| <b>V/s.</b>                   |                 |
| Lokesh Omprakash Mehta & Ors. | ... Respondents |

Mr. Jamshed Ansari for the applicant.

Mr. S.S. Pednekar APP for the State.

**CORAM : AMIT BORKAR, J.**

**DATED : NOVEMBER 9, 2022**

**P.C.:**

1. The applicant who is original accused No.1 has filed present application challenging order dated 4<sup>th</sup> May, 2020 passed by the learned Magistrate issuing process.

2. The respondent No.1/original complainant filed a complaint against the applicant and others on the basis of dishonor of cheque dated 1<sup>st</sup> September, 2021 bearing No.815520 drawn on Syndicate Bank Worali, Mumbai in an amount of Rs. 25,00,000/- (Twenty Five Lac Only). The cheque was dishonored with the remark "Account Closed". According to the complainant, another cheque issued by accused No.2 was also dishonored. The complainant thereafter issued statutory notice and filed a complaint on the basis of dishonor of aforesaid cheques issued by accused No.1 and 2.

3. The said order of issuance of process is the subject matter of the present application. According to the applicant, by agreement dated 3<sup>rd</sup> November, 2020 annexed to the application at Exhibit B and another agreement dated 29<sup>th</sup> June, 2021 the liability of the applicant to pay amount of the complainant had been taken over by the son of the applicant.

4. On perusal of Exhibit B, it appears that the said document has not been signed by the complainant. If the document is not signed by the complainant, the complainant would not be bound by the terms of agreement entered into between the accused No.1/applicant and her son. Even if the applicant is termed as guarantor for the transaction, liability of guarantor would not be extinguished unless the creditor expressly accepts the terms of transfer of liability from the guarantor to a third party. In the absence of incontrovertible or the document of sterling quality to show that the applicant was not liable to pay amount of cheque to the complainant, no fault can be found with the order of issuance of process. The order passed by the learned Magistrate cannot be termed as manifestly perverse or resulting into miscarriage of justice.

5. It is made clear that the observations made in the order shall not influence the Magistrate while deciding the complaint.

6. There is no merit in the petition. The petition is thus dismissed. No costs.

**(AMIT BORKAR, J.)**