

Ghuge

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

WRIT PETITION NO. 4468 OF 2022

Innova Pharma Through its Prop. K. Venkata Rajani.	... Petitioner
V/s.	
The State of Maharashtra and Anr.	... Respondents

Ms. Vrushali L. Maindad a/w Shaheen Kapadia for
petitioner.

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

Mr. Arshay R. Kapadia for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 12, 2022

P.C.:

1. The petitioner is challenging order of issuance of process in a proceeding under Section 138 of the Negotiable Instruments Act, 1881. The first ground raised by the petitioner is that cheque in question was issued as security. The Apex Court in the case of **Sunil Todi Vs. State of Gujarat**, 2021 SCC OnLine SC 1174 has held that the cheques issued as security for transaction can be termed as valid basis for initiating proceedings under Section 138 of the Negotiable Instruments Act, 1881.

2. It is submitted that there was no legally recoverable debt. At this stage there is no document on record of unimpeachable nature to shows that the debt in question was not legally recoverable debt.

3. The next contention raised on behalf of the petitioner is that the account from which the cheque in question was issued from closed account. The said fact was intimated to the complainant. Despite said fact, the complainant deposited the cheque in the closed account. The law on this point is well settled that the ground of counter demanding of cheque does not exonerate the accused from offence under Section 138 of Negotiable Instruments Act, 1881.

4. The third ground raised is that the proceedings under the provisions of Arbitration and Conciliation Act, 1996 are pending and unless there is adjudication about the legally recoverable debt, and in absence of amount of legally recoverable debt being quantified by the arbitrator, there is no legally recoverable liability. The proceeding under the provisions of Arbitration and Conciliation Act, 1996 are for the recovery of amount. At the stage of issuance of process, the offence under Section 138 of the Negotiable Instruments Act, 1881 is triggered when the ingredients thereof are prima facie fulfilled. It is not the case of the petitioner that the cheque was not signed by the petitioner. The last submission made is that she is a woman is of no relevance.

5. Therefore, no interference is warranted with the impugned order.

6. However, it will be open for the petitioner to raise all contentions before the learned Magistrate at the time of Trial.

7. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)