

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

CRIMINAL WRIT PETITION NO. 6335 OF 2021

Dhanraj S. Poojari

...Petitioner

Versus

Melwyn Menezyses and Anr.

...Respondents

Mr. Aditya Pratap a/w Tanma Bidkar i/by Aditya Pratap Law Offices,
Advocate for Petitioner.

Mr. Pramod Kumar Parida a/w Ms. Kiran Vadher, Advocate for
Respondent No.1.

Mr. S. R. Agarkar, APP for Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th AUGUST, 2022.

P.C. :-

1. The Petitioner is prosecuted for an offence under Section 138 Negotiable Instruments Act (for short 'N.I. Act'). This Petition has been preferred challenging the complaint filed by Respondent No.1 before the learned Metropolitan Magistrate 48th Court, Andheri Mumbai.

2. The brief allegations in a complaint are as follows :-

The Accused is the nephew of the complainant. He is the son of complainant's sister. The Accused was in financial difficulty. The Accused and his mother approached the complainant and requested for loan. The complainant transferred the amount of

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Rs.90,00,000/- on 8th May, 2017 to the account of his sister (mother of Accused) by way of loan with interest. On 9th May, 2017 Accused issued cheque no. 061810 dated 15th November, 2017 for an amount of Rs.90,00,000/- in favour of complainant. Accused issued letter of acknowledgment for receipt of Rs.90,00,000/-. On 8th November, 2017, Accused and his mother came to house of complainant and told him not to deposit the cheque till 2018. The Accused issued another cheque No.32263 for Rs.90,00,000/- without date. The mother of Accused requested to complainant to extend the date of repayment on 21st March, 2018. The Accused sent e-mail on 3rd June, 2018 and admitted liability of Rs.90,00,000/- bearing cheque no.32263 was deposited by complainant. It was dishonored on 1st March, 2019. Notice was demand was sent to the Accused on 29th March, 2019. It was replied. Rejoinder was forwarded by the complainant. Complaint was filed for offence under Section 138 of N.I. Act. Process was issued for the said offence.

3. Learned Advocate for Petitioner submitted that complaint is false. There was no liability. The entire amount was paid to the complainant. The cheque was given as a security. It was misused by the complainant. The entire loan amount was Rs. 90,00,000/-

is repaid in two installments of Rs.61,78,000/- on 25th January, 2019 and Rs.35,20,000/- on 28th February, 2019. The complainant received both the installments which is evident from the statement attached to the Petition.

4. Learned Advocate for Respondent No.1 submitted that, the defence of the Petitioner cannot be appreciated at this stage. The documents relied upon by the Petitioner can be relied upon by way of defence during the trial. The documents relied upon by the Petitioner does not establish that the entire payment is repaid to the Petitioner. The defence is based on disputed question of fact.

5. On perusal of complaint it is evident that the case of complainant is that the Accused sought financial help from complainant. He represented that he is in financial constraints and required to pay money to his lenders to the tune of Rs.1,00,00,000/-. The mother of Accused also requested to help her son. The Accused is the nephew of the Respondent No.1/complainant. The Accused and his mother assured to return the loan amount if advance by the complainant with interest. The complainant transferred an amount of Rs.90,00,000/- through his account to the account of his sister. The Accused issued a cheque bearing no. 061810 for Rs.90,00,000/- infavour of complainant. He

also issued a letter of acknowledgment on his on his letter head admitted the receipt of Rs.90,00,000/-. It is further alleged that, on 8th February, 2017 the Accused and his mother approached the complainant with a request not to deposit a cheque till March, 2018. They also represented that the flat belonging to mother of the Accused is offered for sale to repay the loan amount. The Accused then issued another cheque for Rs. 90,00,000/- thereafter, the mother of Accused requested for extension of time to repay the said amount. The complainant presented the cheque with bank it was dishonored on 1st March, 2019 with remarks “funds insufficient”. The contention of Accused is that entire payment is made to the complainant by relying upon the bank statement. At this stage the defence adduced by the Petitioner cannot be accepted. On the basis of contentions and documents relied upon by the Petitioner no finding can be given at this stage that the amount is repaid. The Respondent has filed an affidavit opposing the relief sought in this Petition. His contention is that no amount is paid. The cross is not concluded.

6. The defence of the Accused will have to be tested during the trial. At this stage it is difficult to accept that there was no liability in respect to the cheque issued infavour of complainant.

The proceedings cannot be quashed on the disputed question of fact. Hence, the Petition is required to be dismissed.

ORDER

- i. Criminal Writ Petition No.6335 of 2021 is rejected and disposed off accordingly is dismissed.
- ii. At this stage the learned counsel for the Petitioner prays for extension of interim stay granted by this Court. The prayer for extension of interim relief is rejected.

[PRAKASH D. NAIK, J.]