

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 78/2022
(Ulhas S/o Shyamraop Kaware Vs. Pramod Durgaprasad Laturiya)
with
CRIMINAL APPLICATION (APL) NO. 59/2022
(Ulhas S/o Shyamraop Kaware Vs. Pramod Durgaprasad Laturiya)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. K. S. Malokar, Advocate for applicant.

CORAM :- AVINASH G. GHAROTE, J.

DATED :- 23.03.2022

Heard learned counsel for the applicant.

The application challenges the institution of the proceeding under Section 138 of the Negotiable Instruments Act by the non-applicant on the ground that it has been filed on the basis of the second notice issued on 26.11.2018, and therefore, was not maintainable, for which, the reliance has been placed on *Tameeshwar Vaishnva Vs. Ramvishal Gupta, 2010 ALL MR (Cri) 660 (SC)* and *Prem Chand Vijay Kumar Vs. Yashpal Singh and another, (2005) 4 SCC 417*. It is however material to note that there are no averments in the complaint under

Section 138 of the Negotiable Instruments Act as regard issuance of any notice prior to the notice dated 26.11.2018, non-compliance of which is claimed to be the cause for initiating the complaint under Section 138 of the Negotiable Instruments Act. Learned counsel for the applicant has been unable to point out any averment in this regard in the complaint under Section 138 of the Negotiable Instruments Act. It is a settled position of law, that for the exercise of power under Section 482 of the Criminal Procedure Code for the purpose of quashing the complaint under Section 138 Negotiable Instruments Act on the grounds raised as above, only the averments in the complaint can be looked into and nothing else.

2. The plea which is sought to be raised of the complaint, having been instituted on the basis of a second notice, is not spelt out from the averments in the complaint under Section 138 of the Negotiable Instruments Act. In view of which, there is no merit in the petition, the application stands dismissed.

3. It is however, made clear that any such plea shall be open for the applicant to be taken in defence in the proceeding before the learned Trial Court.

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(AVINASH G. GHAROTE, J)