

Nikita

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

**WRIT PETITION NO.3209 OF 2022
WITH
WRIT PETITION NO.3260 OF 2022**

Pramod Yashwant Desai ... Petitioner
V/s.
The State of Maharashtra and Anr. ... Respondents

Mr. Hitendra Parab i/b Mr.Aashish Satpute for the
Petitioner.

Mr. Arfan Sait, APP for the State.

Mr. Bhushan Deshmukh i/b Mr.Shirke a/w Mr. Vedant
Bende for Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 20, 2023

P.C.:

WRIT PETITION NO.3209 OF 2022

1. Respondent No.2 is original complainant who had filed complaint under Section 138 of the Negotiable Instruments Act,1881. While passing of order of issuance of process, the learned Magistrate has recorded a finding that there are sufficient grounds to proceed under Section 25 of the Payment of Settlement System Act, 2007. The Magistrate has further observed that the process shall be issued against the accused for offences punishable

under Section 25 of the Payment and Settlement System Act, 2007.

2. On perusal of the complaint, it appears that the complaint was filed invoking provisions of Section 138 of the Negotiable Instruments Act, 1881. The issuance of process under the provisions of Payment of Settlement System Act, 2007 was not prayed for. This shows complete non application of mind. The order of issuance of process, therefore cannot be sustained.

3. For the above reasons, the impugned order dated 19th November 2021 passed by 5th Judicial Magistrate First Class, Kolhapur in Case No. 4377 of 2021 below Exhibit 1 is quashed and set aside.

4. The learned Magistrate shall reconsider the complaint and the material produced before him afresh and shall pass order in accordance with law.

5. The writ petition stands disposed of.

WRIT PETITION NO.3260 OF 2022

6. Stand over to 3rd April 2023.

7. Parties shall appear before the Learned Magistrate on 5th April 2023.

8. Ad-interim relief granted earlier to continue till 3rd April 2023.

(AMIT BORKAR, J.)