

Nikita

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

WRIT PETITION NO.688 OF 2023

Rajesh Babulal Shah and Anr. ... Petitioners

V/s.

Chandresh Chimanlal Shah and Anr. ... Respondents

Dr. Samarth S. Karmarkar i/b Karmarkar and
Associates for the Petitioner.

Ms. M.R. Tidke, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 13, 2023

P.C.:

1. The challenge in this petition is to the order dated 6th January 2020, passed by Metropolitan Magistrate 14th Court at Girgaon Mumbai, in complaint under Section 138 of Negotiable Instruments Act, 1881.

2. The petitioners are challenging order of issuance of process mainly on the ground that they became the partner of accused No.1 firm with effect from 31st January 2019. According to them, the cheque in question was earlier dishonoured but only with an intention to initiate prosecution against the petitioners, the cheque was again presented for encashment on 7th March 2019. According to them, the date of cheque is 13th December 2018. Therefore, according to them, on the date of transaction and on the date of

issuance of cheque they were not a partner with the result liability under Section 141 of Negotiable Instruments Act, 1881 has not attracted.

3. It is well settled in view of Judgment of the Apex Court in the case of **S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan**, reported in 2022 SCC OnLine SC 1238 that the person who is in-charge and responsible for conduct of affairs of firm/company is liable to be proceeded with and punishable under Section 138 of Negotiable Instruments Act, 1881. Every person who is in-charge and responsible for affairs of the firm on the date of cheque, date of dishonour, date of receipt of notice and on the 15th day of the date of receipt of notice are liable to be proceeded under Section 141 of Negotiable Instruments Act, 1881. In the facts of the case, according to the petitioners, they became partners on 31st January 2019. The event of presentation of cheque dishonour notice and expiry of 15th day after receipt of notice occurred after they became partners, therefore prima facie the petitioners are liable to proceed under Section 141 of Negotiable Instruments Act, 1881.

4. The order of issuance of dishonour of cheque suffered from illegality.

5. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 20th April 2023. Paragraph 5 is replaced.