

AGK

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

WRIT PETITION NO.349 OF 2023

Shaila Anil Miraje

... Petitioner

V/s.

Minaj Mahammadgous Shaikh & Anr.

... Respondents

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Mr. Nagesh Y. Chavan for the petitioner.

Mr. A.R. Patil, APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 11, 2023

P.C.:

1. The challenge in this writ petition is to the order passed under section 143-A of the Negotiable Instruments Act, 1881 in a complaint under section 138. The transaction between the complainant and accused is of loan. According to the averments in the complaint, the accused executed a receipt acknowledging payment of Rs.4,50,000/-. The cheque amount corresponds with the amount mentioned in the receipt. Necessary averments to that effect are made in paragraph 2 of the complaint.

2. At the stage of inquiry under section 143-A of the Negotiable Instruments Act, 1881, prima facie satisfaction as to fulfillment of ingredients of offence under section 138 of the Negotiable Instruments Act, 1881 is required. On prima facie satisfaction of legally recoverable debt, the Magistrate has discretion to direct the

accused to deposit up to 20% of the cheque amount. In the facts of the case, the Judicial Magistrate First Class by way of impugned order exercised discretion by directing the accused to deposit 15% of the cheque amount.

3. Considering the averments made in the complaint and prima facie fulfillment of ingredients under section 138 of the Negotiable Instruments Act, 1881, there is no error in exercise of discretion passed by the Judicial Magistrate First Class. The discretion exercised is neither perverse nor capricious.

4. The writ petition, therefore, stands dismissed. No costs.

5. It is made clear that the observations made in this order are restricted while considering validity of the order under section 143-A of the Negotiable Instruments Act, 1881 and the learned Magistrate shall decide the complaint uninfluenced by the observations made in this order.

(AMIT BORKAR, J.)