

Ghuge

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

CRIMINAL APPLICATION NO.67 OF 2023

Sachin Manohar Deshmukh and Ors ... Applicants

V/s.

State of Maharashtra and Ors ... Respondents

Mr. Harshad E. Palwe with Rukhsana Khan, Mr. Sandip Mallick for the applicants.

Mr. M.G. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 30, 2023

P.C.:

1. Accused in a complaint under Section 138 of the Negotiable Instruments Act, 1881 are challenging order of issuance of process particularly on three grounds.

(i) The order of issuance of process does not disclose application of mind.

(ii) The verification clause of the complaint does not specifically state that the facts stated in the verification are stated on personal knowledge of the complainant.

(iii) The details of recoverable debt are not pleaded in the complaint.

2. In so far as the first ground is concerned, the order of issuance of process reads as under :-

ORDER BELOW EXH.1.

Perused complaint, Verification statement and the documents filed. Heard learned Advocate for complainant. The present complaint is filed against accused Nos.1 to 4. Accused No.1 is a Limited Company and accused Nos.2 to 4 are the Directors of accused No.1 company as per company master data filed by the complainant. The accused Nos.2 to 4 are responsible and in-charge of accused No.1 company for the conduct of the business of the company vide Section 141 of the N.I. Act. As such, the complainant has made out prima-facie case against accused Nos.1 to 4 to take cognizance of offence under Section 138 of Negotiable Instruments Act. With this following order :

ORDER

Issue Process against accused Nos.1 to 4 for the offence punishable under Section 138 of the Negotiable Instruments Act vide Section 204 of the Code of Criminal Procedure. Returnable on next date.

3. In my opinion, the aforesaid order discloses application of mind and is not a mechanical order which was passed by Magistrate in some complaints. It is well settled that while issuing process detailed reasons are not necessary but the application of mind must be apparent from the tenor of the order. I am satisfied that there is application of mind on the part of Magistrate while passing order of issuance of process.

4. The next ground is about personal knowledge of complainant who has verified the complaint. Without going into the issue as to whether the submission is factually correct or not, it is well settled that defect, if any, in the verification can be rectified during course of proceeding while tendering examination-in-chief in view of Section 145 of the Negotiable Instruments Act, 1881. Therefore, in my opinion, if at all there is any defect in the

verification same can be cured during the examination in chief.

5. The third ground is lack of particulars of legally recoverable debt. The complainant in paragraph 9 of the complaint has specifically stated that the cheques in question were towards part payment of principle amount, redemption particulars and default interest arising out of debenture trust payable by the insurer and the accused. The earlier paragraphs gives description about the transaction between the parties. Therefore, in my opinion, the averments made in the complaint are sufficient to give idea to the accused about the factum of legally recoverable liability pleaded by the complainant. Therefore, I find no merit in the submissions. No other submission is made. There is neither error of jurisdiction nor error in the order impugned. The Criminal Application stands dismissed. No costs.

(AMIT BORKAR, J.)