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

CRIMINAL APPLICATION NO.647 OF 2022

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Nandkishor Kanhaiyalal Bhardwaj ... Applicant

V/s.

Gulabshankar Kanhaiyalal Bhardwaj
& Anr. ... Respondents

Mr. Pradeep Singh with Ms. Sarah Pereira for the
applicant.

Mr. Nilesh Gupta with Mr. Saurab Tiwari for
respondent no.1.

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

CORAM : AMIT BORKAR, J.

DATED : APRIL 21, 2023

P.C.:

1. The challenge in this criminal application is to the order of issuance of process in a proceedings under section 138 of the Negotiable Instruments Act, 1881.

2. The dispute is between the complainant and his brother. According to paragraph 13 of the complaint, settlement agreement was executed between the parties on 30 December 2020. Prima facie as per the settlement agreement, two cheques issued by the accused were mentioned. In the third paragraph of the said agreement, accused promised to repay amount of Rs.4 lakh in the month of May 2020.

3. According to the applicant, the agreement dated 30 December 2020 refers to only two cheques bearing No.000051 and 000052 of Rs.4 lakh each. He, therefore, submitted that the cheque in question bears No.100093 dated 29 May 2021 which does not figure in the agreement and, therefore, the cheque was not issued for enforcement of legally recoverable liability. However, learned advocate for the applicant invited my attention to the last paragraph of the agreement dated 30 December 2020. As per the said clause, the accused in addition to issuance of aforesaid two cheques agreed to pay an amount of Rs.4 lakh to the complainant in the month of May 2021. The cheque in question bears date 29 May 2021.

4. The scope of writ petition challenging order of issuance of process is limited to the extent of considering averments in the complaint as correct. Based on the said criteria, it is not open for the accused to contend that the cheque was not issued for legally recoverable liability. Such plea can be raised during trial. Therefore, in view of last clause of agreement dated 30 December 2020 prima facie complainant has proved existence of legally recoverable liability.

5. There is no merit in the criminal application. The criminal application stands dismissed. No costs.

(AMIT BORKAR, J.)