

Nikita

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

WRIT PETITION NO.3445 OF 2021

Asit Umashankar Aggarwal ... Petitioner
V/s.
The State of Maharashtra and Ors ... Respondent

Mr. Rishi Murarka for the Petitioner.

Mr. Y.M. Thakur, for respondent No.2.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 19, 2023

P.C.:

1. The challenge in this petition is to the order dated 13th December 2018 passed by the learned Magistrate, 5th Court, Ichalkaranji in S.C.C. No.2510 of 2018. The petitioner is an accused in proceedings under Section 138 of the Negotiable Instruments Act, 1881. By the impugned order, learned Magistrate has issued process.

2. The first ground which the petitioner has raised is that the complainant has interpolated dates on the disputed cheque. At the stage of issuance of process and in a petition challenging of issuance of process, this being question of fact cannot be adjudicated. Such question of fact needs to be raised before the Magistrate at an appropriate state during trial.

3. The next ground raised is that there is no legally enforceable

liability. At this stage, the petition is challenging order of issuance of process. Such contention being question of fact, cannot be raised. It is open for the parties to lead evidence in accordance with the plea raised by the parties before the Magistrate. Whether there is legally enforceable liability or not is an essential question of fact which cannot be adjudicated in a petition challenging order of issuance of process.

4. Learned advocate for the petitioner relied on judgment of this Court in **Pinak Bharat and Company Vs. Anil Ramrao Naik and Ors.** in Criminal Appeal Nos.1630 of 2011 and 1631 of 211 decided on 2nd December 2022 where a learned Single Judge of this Court was considering an appeal arising out of acquittal of the accused. The learned Judge considered Section 87 of the Negotiable Instruments Act, 1881. Since the present petition arises out of an order of issuance of process, such contention cannot be permitted to be raised. In the present petition, there is no merit.

5. The learned advocate for the complainant relied on the judgment in the case of **Bir Singh Vs. Mukesh Kumar** reported in (2019) 4 SCC 197 : MANU/SC/0154/2019, wherein the Apex Court in paragraph 37 has held as under:-

“37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Section 20, 87, and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly

signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.”

6. In that view of the matter, there is no need to entertain the petition.
7. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)