

AGK

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

WRIT PETITION NO.2075 OF 2022

Rajiv Kantilal Gogri & Anr.

... Petitioners

V/s.

Siddharth Mehta & Anr.

... Respondents

WITH

CRIMINAL APPLICATION NO.967 OF 2022

Prithviraj Sayajirao Deshmukh & Ors.

... Applicants

V/s.

Shri Gurudatta Sugars Marketing
Pvt. Ltd. & Anr.

... Respondents

Mr. Maniram R. Gaud for the petitioners in
WP/2075/2022.

Mr. Ansh Karnawat i/by Mr. Paras Yadav and Raturaj
Bankar for the applicants in APL/967/2022.

Mr. Kunal Dalal for respondent no.1 in WP/2075/2022.

Ms. Aastha Kaushal with Mr. Yash Arora i/by Bharucha
& Partners for respondent no.1 in APL/967/2022.

Mr. Arfan Sait, APP for the respondent/State in both
the matters.

CORAM : AMIT BORKAR, J.

DATED : MARCH 29, 2023

P.C.:

Writ Petition No.2075 of 2022:

1. The challenge in this writ petition is to the order dated 26th

November 2021 passed by the learned Metropolitan Magistrate at Sewri (Special Court), 54th Court, Mazgaon Mumbai. By the impugned order, the Magistrate has exercised powers under section 143A(1) and (2) of the Negotiable Instruments Act, 1881 and directed the petitioners to pay 20% of the amount of cheque.

2. Perusal of the order indicates that no reasons at all have been assigned while passing the order. The supply of reasons has to be held as integral part of process of natural justice. Such supply of reasons is for the benefit of the superior Court to ascertain validity and legality of the decision making process. In absence of such reasons, the superior Court would not get advantage of either the material or the reasons to arrive at conclusion. The order under section 143A affects substantive rights of the parties and, therefore, it is necessary for the Magistrate to supply reasons for exercise of such powers. Therefore, in my opinion, the impugned order cannot be sustained. Hence, following order:

- a) Impugned order dated 26th November 2021 passed by the learned Metropolitan Magistrate at Sewri (Special Court), 54th Court, Mazgaon, Mumbai is quashed and set aside;
- b) The Special Court shall hear both sides and after recording plea shall decide application under section 143A of the NI Act.

3. The writ petition is disposed of in above terms. No costs.

Criminal Application No.967 of 2022:

4. Leave to amend. Amendment to be carried out forthwith.
5. The challenge in this criminal application is to the order dated 27th April 2022 passed by the learned 7th Judicial Magistrate First Class, Kolhapur in Summary Criminal Case No.2967 of 2020.
6. The proceedings under section 138 of the Negotiable Instruments Act, 1881 are initiated against the applicants and others. The complaint has been filed against accused no.1/company and present applicant being directors of said company. After recording plea, application under section 143A was filed. By the impugned order, the applicants who are directors of accused no.1/company are directed to pay 4% of the cheque amount within sixty days. Aggrieved thereby, the directors have filed present criminal application.
7. This Court by order dated 8th March 2023 in a group of matters, lead matter being Criminal Application NO.886 of 2022 **(Lyka Labs Limited & Anr v. The State of Maharashtra & Anr.)** held that authorized signatory of a company is not liable for compensation under section 143A of the Negotiable Instruments Act, 1881. This Court has held that order under section 143A of the Negotiable Instruments Act, 1881 can be passed only against company (drawer). It is held that the expression 'drawer' in section 143A is restricted only to the company.
8. For the reasons stated in the order dated 8th March 2023, the criminal application deserves to be allowed. The criminal application is allowed.

9. The impugned order dated 27th April 2022 passed by the learned 7th Judicial Magistrate First Class, Kolhapur in Summary Criminal Case No.2967 of 2020 is quashed and set aside.

10. No costs.

(AMIT BORKAR, J.)