

Ghuge

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

**WRIT PETITION NO.6205 OF 2021**

Milind Dande ... Petitioner

**V/s.**

The State of Maharashtra and Ors ... Respondents

Ms. Pranita P. Hingmire for the petitioner.

Mr. Himanshu S. Gavit, Mr. Sanjeev Deore, Mr.  
Himanshu Thakur, Ms. Suchita Pawar for the  
respondents.

Mr. Arfan Sait, APP for the State.

Mr. S.B. Unde, WPSI, Upnagar Police Station, Nashik.

**CORAM : AMIT BORKAR, J.**

**DATED : MARCH 30, 2023**

**P.C.:**

1. Challenge in this petition is to the maintainability of Summary Criminal Case No.1319 of 2009 before the 4<sup>th</sup> Judicial Magistrate First Class, Nashik Road mainly on the ground of limitation.

2. According to the petitioner, complaint was delayed but in absence of application of condonation of delay, the complaint was not maintainable. It is well settled that at this stage the averments in the complaint are required to be accepted as true. In paragraph 5 it is stated that there were three cheques issued by the accused. The complainant therefore issued statutory notice. The first is dated 8<sup>th</sup> April, 2019 and second is 29<sup>th</sup> May, 2019. The first notice was received by the accused on 27<sup>th</sup> May, 2019 and the second

notice was returned on 29<sup>th</sup> May, 2019 with remark he intimated not claimed.

3. The complaint is filed on 5<sup>th</sup> July, 2019. If according to the petitioner/accused there is dispute regarding receipt of notice, it is always open for the accused to raise such dispute during the trial. However, at the stage of maintainability of complaint/issuance of process the court required to consider the averments in the complaint assuming them to be correct. In the absence of impeachable document to show that the complaint is barred by limitation it cannot be treated as not maintainable as barred by limitation.

4. In that view of the matter, the order of issuance of process cannot be faulted.

5. The writ petition is, therefore, stands dismissed. No costs.

**(AMIT BORKAR, J.)**