

AGK

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

**WRIT PETITION NO.6453 OF 2021
WITH
INTERIM APPLICATION NO.3156 OF 2021**

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.05.02
16:44:51
+0530

Indreshkumar Sidhnath Dubey & Anr. ... Petitioners

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. G.R. Dwivedi, for the petitioners.

Mr. A.R. Patil, APP for respondent no.1/State.

Mr. C.B. Yadav for respondent no.2.

CORAM : AMIT BORKAR, J.

DATED : MAY 2, 2023

P.C.:

- 1.** The challenge in this writ petition is to the order of issuance of process and order of condonation of delay of 15 days.
- 2.** The order of issuance of process is challenged firstly on the ground that the cheque in question is post-dated cheque. Mere fact that the cheque in question is post-dated cheque is no ground to set aside the order of issuance of process. The question is whether on the date of offence, there was legally recoverable liability, or not. The said question being question of fact needs to be adjudicated at an appropriate stage. From the averments in the complaint, prima facie it appears that on the date of offence, there was legally recoverable liability.

3. The next submission is that the order of condonation of delay of 15 days was passed without giving opportunity of hearing. The revisional Court has considered the validity of order of condonation of delay. The question raised before this Court was not raised before the revisional Court. The revisional Court in paragraph 6 held that the complainant produced medical certificate disclosing ailment of the complainant. The revisional Court based on the material on record held that the reason supplied by the complainant is sufficient cause. There is no reason to interfere with the order as I find that the reasons supplied by the complainant is sufficient.

4. In so far as the ground of money lending is concerned, the said question being question of fact, it needs to be raised at an appropriate stage before the appropriate Court.

5. There is no merit in the writ petition. The writ petition is dismissed. No costs.

6. In view of dismissal of the writ petition, the interim application does not survive and stands disposed of accordingly.

(AMIT BORKAR, J.)