

VRJ

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

WRIT PETITION NO.5245 OF 2022

Deep Kumar Agarwal ... Petitioner
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Siddharth Murarka with Mr. Devendra Tiwari i/by
Law Chamber of Siddharth Murarka for the petitioner.

Mr. M.G. Patil, APP for the respondent No.1/State.

Mr. Sachin Pandey for the respondent No.2.

Mr. Soham Powar i/by Kuldeep Patil for the
respondent/CBI.

CORAM : AMIT BORKAR, J.

DATED : APRIL 17, 2023

P.C.:

1. The petition is directed against the order of issuance of process in a proceedings under section 138 of the Negotiable Instruments Act, 1881.
2. According to the petitioner, he is sued as authorized signatory of “Dewans Logistics”. According to the petitioner, he is not concerned with the proprietary firm “Dewans Logistics” as he has disassociated himself from the said firm in the year 2014. According to the petitioner, he has not received the statutory notice.
3. On perusal of the complaint and material annexed along

with present petition, it appears that the check has been signed by the petitioner on behalf of Dewans Logistics. Statutory notice is addressed to the petitioner. The petitioner has not filed reply to the statutory notice.

4. Considering the scope of petition challenging order of issuance of process, the scope of judicial review is to ascertain whether from the averments in the complaint and accepting the averments as correct, the essential ingredients of the offence under section 138 are made out or not. On perusal of the complaint, prima facie, I am satisfied that the essential ingredients of the offence under section 138 of the Negotiable Instruments Act, 1881 are made out.

5. Whether the petitioner had disassociated himself from the Dewans Logistics is the issue which the Magistrate need to be considered at the time of trial. At this stage this Court in absence of incontrovertible document cannot go into this issue. According to petitioner, Dewans Logistics has not been made party.

6. Since the concept of principal offender is applicable to the company and as per the case of the petitioner, Dewans Logistics is proprietary firm, principal offender not being made party is of no relevance. About the service of notice also the petitioner can raise such contention at the time of trial. By keeping contention as raised above open, writ petition cannot be entertained.

7. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)