IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 31 OF 2023

Neetu Vinkal Shah ..Petitioner

Versus

The State of Maharashtra & Ors. ..Respondents

Mr. Dipen Furia i/b. M/s. Shah and Furia Associates for Petitioner.

Mr. N.B. Patil, APP for State/Respondent No.1.

Mr. Deepan Dixit for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 25 JULY 2023

PC :

1. The Petitioner has challenged the order dated 06.12.2018 passed by the Metropolitan Magistrate, 14th Court, Girgaon, Mumbai, in C.C.No.715/SS/2018; by which the process was issued against the Petitioner U/s.138 r/w. 141 of the Negotiable Instruments Act, 1881 (for short 'N.I.Act').

2. Learned counsel for the Petitioner made only one submission that the cheques were not issued by the present

petitioner. They were issued by her husband and, therefore, for dishonour of those cheques, the petitioner cannot be prosecuted U/s.138 of the N.I. Act. He submitted that, Section 141 of the N.I. Act has no application in this case. He submitted that the Petitioner is not even an Account holder on which the cheques were drawn.

3. Learned counsel for the Respondent No.2 submitted that, it was a *modus operendi*. The loan was taken in the name of the wife. The cheques were issued by the husband and there are many such prosecutions pending against the Petitioner and her husband.

4. I have considered these submissions in the light of averments made in the complaint. The complaint mentions that the Petitioner and her husband approached the Respondent No.2-complainant for loan which was to be utilized in the petitioner's gold and jewellery business. The complainant gave them an amount of Rs.20 lakhs. The complaint goes on to mention as to how the Petitioner's husband at the first instance gave duplicate diamonds in repayment of the loan. But after constantly following

the matter with the Petitioner and her husband, the Petitioner's husband issued two signed cheques bearing No.000019 and 000020 for Rs.10 lakhs each; both dated 30.08.2018 drawn on Bank of India, C.P. Tank branch, Mumbai. Those cheques were dishonoured and after following due procedure the complaint was filed on 30.10.2018. The learned Magistrate issued process on 06.12.2018.

5. Learned counsel for the Respondent No.2 submitted that the Petitioner has approached this Court belatedly only after the trial Court had directed the accused No.1 to deposit 20% of the cheques amount. Be that as it may, the fact remains that the Petitioner cannot be said to have committed the offence U/s.138 of the N.I.Act. The said section reads thus:

> **"138 - Dishonour of cheque for insufficiency, etc., of funds in the account -**
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> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account

> by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless--
>
> > (a) the cheque has been presented to the bank within a period of six months* from the date on which it is drawn or within the period of its validity, whichever is earlier;
> >
> > (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
> >
> > (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

6. By reading of the said section, it is clear that, only person who draws a cheque on an account maintained by him can be prosecuted on dishonour of such cheque under the conditions mentioned under the said section.

7. In the present case, admittedly, the cheques are issued by the Petitioner's husband. The copies of the cheques are annexed to the additional affidavit of the Petitioner. Even the complaint itself mentions that the cheques were issued by the petitioner's husband. Therefore, in any case, the Petitioner would not be liable to be prosecuted U/s.138 of the N.I. Act. For the other grievances made by learned counsel for the Respondent No.2, he has other remedies available in law which will not be affected by this particular order.

8. Hence, the following order:

O R D E R

i) The order dated 06.12.2018 passed by the Metropolitan Magistrate, 14th Court, Girgaon, Mumbai, in C.C.No.715/SS/2018, issuing process against the Petitioner U/s.138 r/w. 141 of the N.I.Act, is quashed and set aside.

ii) It is made clear that the process issued only against the Petitioner is set aside.

iii) This order shall not affect the proceedings against the Petitioner's husband, who is accused No.1 in that proceedings.

iv) The writ petition is disposed of in the aforesaid terms.

v) Since the trial is pending since 2018, it is expedited.

(SARANG V. KOTWAL, J.)