

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

CRIMINAL WRIT PETITION NO. 169 of 2023

PVN Fabrics Pvt. Ltd. & Ors.

..Petitioners

Versus

M/s. Sunil Chemicals Industries & Anr.

..Respondents

Mr. D. R. Singh i/b. Sachhidanand Singh for Petitioners.

Mr. Omar Khaiyam Shaikh a/w. Vikas Salvi i/b. Vikas Salvi and Associates for Respondent No.1.

Mr. N. B. Patil, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 11 JULY 2023

PC :

1. The Petitioners have challenged the order dated 10/01/2022 passed by learned Metropolitan Magistrate, 72nd Court, Vikhroli, Mumbai in the complaint No.1280/SS/2021 under section 138 r/w. 141 of the Negotiable Instruments Act (for short 'N.I.Act').

2. Learned counsel for the Petitioners invited my attention to the complaint. His contention before the Court was that the dues were already paid by the accused to the complainant even before filing of the complaint. He relied on the averments in the

complaint to support his contentions. He also relied on a copy of his own ledger account which is annexed at Exhibit-D.

3. I have considered these submissions and I have perused the complaint. The case of the complainant in his complaint is that, he had supplied plastic granules worth Rs.21,24,023/- to the accused as per the tax invoices dated 31/01/2018 and 08/02/2018. After delivery of the goods, the accused/petitioners promised to repay the balance amount of Rs.18 lakhs and gave three post dated cheques amounting to Rs.10 lakhs. All these cheques were dishonoured. In paragraph-7 of the complaint, the complainant has stated that the accused made part payment of Rs.7 lakhs by R.T.G.S. towards total outstanding dues. The balance amount remained at Rs.11 lakhs, for which, four post dated cheques drawn on ICICI bank, Mulund (West) branch were issued. The details are mentioned in paragraph-7 of the complaint. Those cheques were dishonoured. The total amount mentioned in these four cheques was of Rs.10 lakhs. This is the subject matter of the complaint before the learned Magistrate.

4. Learned counsel for the complainant submits that, paragraph Nos.5 and 7 of the complaint indicate that the entire dues were paid and there was no cause of action. He relied on his own ledger account which is at Exhibit-D to contend that there was no dues left.

5. There is no force in this submission. The paragraph-7 of the complaint is very clear that out of the total dues of Rs.18 lakhs, only Rs.7 lakhs were paid by R.T.G.S. and Rs.11 lakhs had remained as dues, for which, the cheques in question were given; which were dishonoured. As far as, ledger account of the accused is concerned, it is of the accused himself. The evidentiary value of the said document will have to be tested during trial. The complainant needs to be given sufficient opportunity to putforth his case through the documents and oral evidence. The accused/petitioners will get sufficient opportunity to cross-examine the complainant's witnesses.

6. Learned counsel for the complainant/Respondent informed the Court that the matter is at the stage of cross-

examination of the complainant. Therefore, on merits, I do not find that this is a case where the High Court can interfere and set aside the order of issuance of process. The disputed question regarding balance of dues can only be decided during trial when the evidence is led. Therefore, there is no merit in this petition.

7. The petition is dismissed.

(SARANG V. KOTWAL, J.)