

Nikita

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

WRIT PETITION NO.194 OF 2023

Esha Rai Tolani ... Petitioner
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Udyan Shah a/w Manish Mirpuri a/w Heena Khan
i/b Premier Legal Practices for the Petitioner.

Mr. Krishna Holambe Patil for Respondent No.2.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 18, 2023

P.C.:

1. The petition is directed against the order of issuance of process in the proceedings under Section 138 of Negotiable Instruments Act, 1881.
2. The first contention on behalf of petitioner is that the petitioner has not signed the cheque based on which prosecution has been initiated. According to him, concerned bank has issued certificate stating that the petitioner has not signed the cheque. In my opinion, whether, the cheque is signed by an accused, is a question, essentially of fact. To prove or disprove the said fact, both parties need to be given opportunity to lead evidence. The document issued by a bank cannot be termed as incontrovertible or unimpeachable document. Therefore, at this stage, issue as to whether the petitioner has signed the cheque cannot be gone into.

3. The next contention on behalf of the petitioner is that the petitioner is not incharge and responsible for day-to-day affairs of accused No.1 company. According to him, the documents on record are sufficient to indicate that the petitioner is not incharge and responsible for day-to-day affairs of the company. Considering the scope of the petition arising out of challenge of order of issuance of process, at this stage, such inquiry is not permissible. In absence of incontrovertible document, any other document which are subject to proof cannot be considered. The contention raised by the petitioner being needs to be adjudicated by the Magistrate at the appropriate stage of trial.

4. The last contention on behalf of the petitioner is that order of issuance of process, there is complete non application of mind. On perusal of the impugned order, I am satisfied that the Magistrate has referred to individual facts of the case which shows application of mind. It is well settled that detailed reasons while issuing order of issuance of process are not necessary. The order of issuance of process must show application of mind. In my opinion, the impugned order discloses application of mind of learned Magistrate.

5. There is no merit in the petition.

6. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)