

AGK

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

CRIMINAL APPLICATION NO.1451 OF 2022

Kreate Energy (I) Pvt. Ltd. & Ors.

... Applicants

V/s.

The State of Maharashtra & Anr.

... Respondents

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.05.08
15:55:19
+0530

Mr. Pulkitesh Dutt Tiwari with Ms. Bency Ramakrishnan i/by Mr. Akash Menon for the applicants.

Ms. M.R. Tidke, APP for respondent No.1/State.

Mr. Jatin P. Shah with Ms. Snehankita Munj and Ms. Shraddha Kamble for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MAY 4, 2023

P.C.:

1. The challenge in this criminal application is to the order of issuance of process in a proceeding under Section 138 of the Negotiable Instruments Act, 1881. The challenge is mainly based on the ground that on 9 July 2021 as per the averments in the complaint, total amount due was to the tune of Rs.12,28,52,615/-. The cheque amount is Rs.10,87,05,152/-. According to the accused, part payment of Rs.1 crore was made after issuance of cheque till the date of encashment. Hence, according to the applicant, legally recoverable liability which forms the disputed cheque is less than the cheque amount.

2. Prima facie it appears that even if the amount of Rs.1 crore is deducted from the total liability as alleged in the complaint, the cheque amount still does not exceed legally recoverable liability on the date of encashment.
3. Learned advocate for the applicant relied on judgment of the Apex Court in **Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel** reported in (2023) 1 SCC 578. On consideration of the facts involved, it is apparent that in the facts of the said case on the date of encashment of the cheque, part amount which remained after accepting the amount of disputed cheque was exceeding legally recoverable liability. Hence, the Apex Court held that considering Section 56 of the Negotiable Instruments Act, such part payment need to be endorsed at the back of cheque.
4. Since in the facts of the case, legally recoverable liability exceeds the disputed amount of cheque, the judgment relied on by the applicant is of no help to the applicant.
5. I find no fault in the impugned order. There is no merit in the criminal application.
6. The criminal application stands dismissed. No costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 6 May 2023 to correct paragraph 4 of the order.