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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.427 OF 2024

Kayyum Kisanseva Kendra Karanjkheda through PETITIONER
Azamat Baig Kayyum Baig Mirza and Another

VERSUS

The State of Maharashtra and Others RESPONDENTS

.....
Mr. Harshal P. Randhir, dvocate for the Petitioners
Mr. S. V. Hange, APP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th MARCH, 2024

ORDER :

1. Petitioners are aggrieved by order of issuance of process by Trial Court under section 138 of the Negotiable Instruments Act. Petitioners unsuccessfully challenged the said order by filing Criminal Revision Application No. 19 of 2023 in Sessions Court.

2. Petitioners claim that the cheque in question, on the basis of which, respondent Nos.2 and 3 have filed complaint under section 138 of the NI Act, was in fact stolen and complaint to that effect was made by petitioners to the Police Commissioner, Aurangabad and Police Inspector Begumpura Police Station on 1st October, 2022. Letter dated 20th December, 2022 is placed on

record at page 82, wherein it is mentioned that the complaint of petitioners was enquired into and statements of petitioners and respondent Nos.2 and 3 were recorded. It appears that, petitioners and respondent Nos.2 and 3 are well acquainted with each other and they had jointly tried to obtain a petrol pump and for that purpose there were financial transactions between them. The said matter is of civil nature and, therefore, parties were asked to approach Civil Court. Learned advocate for petitioners, therefore, submits that considering these aspects, Trial Court has erred in issuing process and without appreciating this aspect Revisional Court has dismissed the revision.

3. Having heard learned advocate for petitioners and learned APP for the State and on perusal of the order of issuance of process and the Revisional Court's order, it is clear that there is sufficient material on record of the Trial Court for issuance of process against petitioners. Revisional Court has observed that whether the cheque is issued for legally enforceable debt or it is misused by the complainant, is a matter of evidence and without giving opportunity to both the sides, merely because petitioners have taken a defence that said cheque has been misused, the same cannot be considered at the initial stage.

4. Revisional Court is perfectly justified in holding that

defence of the petitioners cannot be considered at the initial stage. Revisional Court has passed a well reasoned order. No case is made out by petitioner to exercise extraordinary writ jurisdiction.

5. The petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

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