

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO. 102 OF 2022
WITH
INTERIM APPLICATION NO. 286 OF 2022**

Indreshkumar Sidhnath Dubey

...Petitioner

Versus

State Of Maharashtra And Anr

...Respondents

Mr. G.R. Dwivedi Advocate for Petitioner.

Mr. C.B. Yadav for Respondent No.2.

Mr. Arfan Sait, APP for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 9th JANUARY, 2024

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P.C.:-

1. The petitioner is facing prosecution for offence under Section 138 of Negotiable Instruments Act, vide C.C. No.246/SS/2017 pending before the Court of Metropolitan Magistrate, 7th Court, Dadar, Mumbai. The Respondent No.2 is the complainant.

2. Brief facts of complaint are as follows:-

Complainant provided loan of Rs.10 lakhs to accused. The accused issued a writing in favour of complainant promising that he would repay the loan amount after one year. Thereafter, complainant advanced further loan of Rs.10 lakhs and Rs. 5 lakhs to accused. Deed of mortgage was executed by accused in favour of complainant. Accused issued three cheques dated 1st

December 2016 bearing cheque No.243625 for amount of Rs. 3 lakhs, cheque bearing No.243627 for Rs. 4 lakhs and cheque bearing No. 243628 for Rs.3 lakhs. Cheques were dishonoured vide memo dated 26th December 2016 with remarks "Account closed". Notice was sent. Complaint filed.

3. Verification statement of complainant was recorded on 29th March 2017. Process was issued under Section 138 of N.I. Act vide order dated 29th March 2017.

4. Petitioner preferred an application before the learned Magistrate seeking discharge on 13th November 2017. The learned Magistrate vide order dated 11th April 2019 rejected the said application on the ground that, plea of the accused is recorded on 22nd September 2017. At this stage, the application of accused is not maintainable. Record shows that complainant filed his evidence affidavit on 26th February 2018, documents were also exhibited. Considering the factual and legal position, the application was rejected.

5. The said order was challenged by the petitioner before the Sessions Court by preferring Criminal Revision Application No. 668 of 2019. The learned Sessions Judge vide order dated 4th January 2022 rejected the revision application on the ground that, the plea of the accused is recorded and evidence has commenced. The contention of the accused is that the

cheques in question were issued as security. The said issue is a matter of evidence for which both the parties have to mount to witness box. Whether the debt is repaid by the accused and cheque is issued as a security is matter of defence. Plea of the accused is recorded and evidence has commenced. There is no illegality in the impugned order.

6. Learned Advocate for the applicant submitted that the plea of the accused was recorded in the absence of accused. The loan in question which is subject matter of the complaint was already repaid. The complainant has initiated civil proceedings which are pending before the Civil Court. The petitioner has filed criminal complaint against respondent/complainant for alleging offences of cheating which is pending before the appropriate court. No documents were served upon. Cheques were issued as security. There was delay in filing complaint. The complainant is indulging in money lending without license.

7. Learned Advocate for Respondent/complainant submitted that the application preferred by petitioner before the trial Court itself is not maintainable as after issuance of process trial Court is not empowered to discharge the accused or dismiss the complaint. The trial Court has passed reasoned order. Said order was confirmed by the Sessions Court. Petitioner was made contention with the application with regard to the plea, the

pleadings indicate that the petitioner had engaged an advocate and plea was recorded. The issues urged by petitioner are matter of evidence. Similar contentions are rejected by this Court in Criminal Writ Petition No. 6453 of 2021. There was no delay in filing complaint. The petition is not maintainable in law and same be dismissed.

8. It is pertinent to note that, the process was issued against the petitioner on 29th March 2017. The plea of the accused is recorded. Evidence of the complainant is adduced. Thereafter, the petitioner preferred application before the learned Magistrate for discharge. There is no provision in law to seek discharge in impugned proceedings. The learned Magistrate has rejected the application. Order is confirmed by the Sessions Court. The cheques were signed by petitioner. Cheques were dishonoured with remarks "Account was closed". The petitioner has urged that the cheques were issued as security and complainant is indulging in business of money lending without license. Another complaint was filed by respondent No.2 against the petitioner viz. C.C. No. 755/SS/2018. The order issuing process was challenged before this Court by preferring Criminal Writ Petition No. 6453 of 2021. Similar grounds were urged. While dismissing the petition vide order dated 2nd May 2023 it was observed that mere fact that the cheque is post dated is no ground to set aside order of process. The question is whether on the date of offence, there was legally recoverable

debt or not. The said question being question of fact needs to be adjudicated at on appropriate stage. Prima facie, there was legally recoverable liability on the date of offence. The Sessions Court considered the validity of order of condonation of delay. In the present petition, the petitioner could not satisfy as to how there was delay in filing complaint. All the contentions cannot be considered at this stage. The trial is pending before the Court since long. The petitioner is apparently delaying the trial.

ORDER

- (i) Writ Petition is dismissed.
- (ii) Trial is expedited.
- (iii) The trial Court is requested to complete trial within a period of six months from the date of receipt of this order.
- (iv) Interim Application stands disposed off.

(PRAKASH D. NAIK, J.)