

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

**CRIMINAL WRIT PETITION NO. 2451 OF 2022
WITH
CRIMINAL WRIT PETITION NO. 2461 OF 2022**

Hansil Bharatkumar Saparia ...Petitioner
Versus
Falguni Vipul Viradia And Anr. ...Respondents

**WITH
CRIMINAL WRIT PETITION NO. 2464 OF 2022
WITH
CRIMINAL WRIT PETITION NO. 2465 OF 2022**

Hansil Bharatkumar Saparia ...Petitioner
Versus
Vipul Kanjibhai Viradia And Anr. ...Respondents

**WITH
CRIMINAL WRIT PETITION NO. 2463 OF 2022**

Hansil Bharatkumar Saparia ...Petitioner
Versus
Falguni Vipul Viradia And Anr. ...Respondents

**WITH
CRIMINAL WRIT PETITION NO. 2453 OF 2022**

Hansil Bharatkumar Saparia ...Petitioner
Versus
Vipul Kanjibhai Viradia And Anr. ...Respondents

**WITH
CRIMINAL WRIT PETITION NO. 2454 OF 2022**

Hansil Bharatkumar Saparia ...Petitioner
Versus
Falguni Vipul Viradia And Anr. ...Respondents

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Mr. Durgesh Jaiswal a/w Mr. Ashish Verma i/by Mr. Dhanraj Lodha
Advocate for the Petitioners in all Writ Petitions.

Mr. Vivek Walvalkar a/w Mr. Amit Shroff i/by Harish Shroff & Co.,

Advocate for Respondent No.1 in all Writ Petitions.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd JANUARY, 2024.

P.C.:

1. The Petitioner in all these Petitions challenges the Order issuing process dated 15th April, 2019 passed by learned 12th Jt. Civil Judge Senior Division and Additional Chief Judicial Magistrate for an offence under Section 138 r/w 142 of the Negotiable Instrument Act (for short 'N.I. Act') and the Order dated 24th November, 2021 passed by Sessions Court dismissing the revision applications preferred by the Petitioner challenging the Order of process.

2. The Petitions relates to complaints filed by the Respondent No.1 for offence under Section 138 of N.I. Act.

3. The complaints which are subject matter of challenge in all these Petitions are C.C. No.14582/2019; C.C. No.14580/2019; C.C. No.14584/2019; C.C. No.14581/2019; C.C. No.14585/2019; C.C. No.14583/2019 and C.C. No.14586/2019.

4. The complainant's case is as follows :-

The Accused are in the business of construction of

buildings. The Accused informed that he has started a project at village Baner, Pune. The complainant and her family members wanted to purchase flats. There was meeting between them. The complainant and family members visited site. The complainant agreed to purchase the flat at Baner project for Rs.70,00,000/-. The Accused agreed to hand over the possession of the flat within stipulated time. 50% of the earnest amount of Rs.35,00,000/- was taken. The Accused received Rs.15,00,000/- on 1st April, 2013, Rs.2,75,000/- on 24th July, 2013 by Cheque No.000021 and 000022. The Accused also received Rs.17,25,000/- in cash from complainant. The Accused did not handover possession of flat. The Accused issued cheque bearing no.169651 for Rs.10,00,000/-. The cheque was deposited by the complainant with her banker. It was dishonoured on 22nd October, 2018 due to 'Insufficient Funds'. The complainant issued notice dated 19th November, 2018 demanding cheque amount. The Accused informed the complainant to redeposit the cheque. The cheque was again deposited. It was dishonoured with remarks 'NON CTS' on 10th January, 2019. Complaint was filed viz. C.C. No.14582 of 2019. The Accused issued another cheque dated 20th October, 2018 bearing no.169655. It was dishonoured with remarks 'Drawers signature differs' on 22nd October, 2018. Notice was sent on 19th November,

2018. Cheque was redeposited. It returned on 10th January, 2019 with remarks 'NON CTS'. Complaint was filed viz. C.C. No.14580 of 2019. Cheque dated 20th October, 2018 for Rs.5,00,000/- bearing no.169618 was dishonoured on 22nd October, 2018 with remarks 'Funds Insufficient'. Notice was sent. Cheque was redeposited. It was dishonoured on 10th January, 2019 with remarks 'NON CTS'. Notice was sent. Complaint bearing C.C. No.14584 of 2019 was filed. Cheque dated 20th October, 2018 for Rs.10,00,000/- bearing no.169652 was dishonoured with remarks 'Funds Insufficient' on 22nd October, 2018. It was redeposited. It was returned on 10th January, 2019 with remarks 'NON CTS'. Complaint bearing no.C.C. No.14581 of 2019 was filed. Cheque dated 20th October, 2018 bearing no.16953 for Rs.10,00,000/- was issued. It was dishonoured on 22nd October, 2018 with remarks 'Signature of drawer differs'. It was redeposited. Cheque was dishonoured on 10th January, 2019 with remarks 'NON CTS'. Complaint was filed viz. C.C. No.14585 of 2019. Cheque dated 20th October, 2018 bearing no.169609 for Rs.5,00,000/- was dishonoured on 22nd October, 2018 with remarks 'Funds Insufficient'. It was redeposited. Cheque was dishonoured on 10th January, 2019 with remarks 'NON CTS'. C.C. No.14583 of 2019 was filed. Cheque dated 20th October, 2018 for Rs.10,00,000/- was issued. It was

dishonoured with remarks 'Signature of drawer differs' on 22nd October, 2018. It was redeposited. Cheque was dishonoured with remarks 'NON CTS' on 10th January, 2019. Complaint bearing no. C.C. No.14586 of 2019 was filed.

5. The learned Joint C.J.S.D. and Additional C.J.M. issued process against the Accused under Section 138 r/w 142 of N.I. Act, vide Order dated 15th April, 2019.

6. The Order issuing process was challenged before the Sessions Court by preferring revision applications. The learned Sessions Judge vide Order dated 24th November, 2021 rejected the application. While rejecting the revision application the learned Sessions Judge has observed that the Court is required to see while dealing with an offence under Section 138 of N.I. Act whether the cheque was issued in due course, whether it was deposited for encashment within time, whether statutory notice is issued and whether the persons concerned person has filed to pay the amount of dishonored cheque. The complainant had complied all the procedural safeguards constitute the offence under Section 138 of the N.I. Act. Whether the Accused was having sufficient balance in his bank account on which the cheque was drawn or whether the amount was insufficient has to be decided on merits after allowing

both the parties to lead their respective evidence. Whether the dishonor of cheque on the ground of not been in CTS form fall within the ambit of Section 138 of N.I. Act has to be decided on merits by allowing both the parties to lead evidence and satisfy the Court on the law point.

7. Learned Advocate for the Petitioner Mr. Jaiswal submitted that the prosecution for the offence under Section 138 of N.I. Act is not maintainable against the Petitioner. It does not satisfy the requirement of Sections 138 and 142 of N.I. Act. The cheques were dishonoured with remarks 'NON CTS' and not on account of 'funds insufficient'. The instrument was discontinued from 31st December, 2018 as per notification of Reserve Bank of India vide Circular No. DPSS(CHE)/569/01.02.003/2017-18 dated 21st June, 2018. Referring this circular the Kotak Mahindra Bank issued a letter to the Petitioner on 28th February, 2020. the illegal instrument cannot attract legal action. Hence, no offence under Section 138 of N.I. Act was made out against the Petitioner. Cheques were handed over as a security which were misused by the complainant. The Accused had refunded an amount of Rs.23,50,000/- out of Rs.45,00,000/-. In the light of Section 56 of N.I. Act, the complainant was required to make an endorsement behind the

cheque on receipt of the amount of Rs.23,50,000/- as the chques were in possession of complainant prior to making the part payment.

8. Learned Advocate for Petitioner has relied upon the following decisions;

i. Mr. Syed Asim Fardeen S/o SyedKhaja Nasrim V/s The State of Telangana And Another¹

iii. Dashrathbhai Trikambhai Patel V/s. Hitesh Mahendrabhai Patel & Anr.²

9. Learned Advocate for the Respondent/complainant Mr. Walavalkar submitted that the proceedings are initiated only to delay the trial. The Petitioner has urged triable issues. The grounds are based on disputed question of facts. The complainant has followed all the mandatory safeguards to initiate action for the offence under Section 138 of N.I. Act. The chques were issued in discharge of legally enforceable liability. When the cheques was deposited for the first time, it were dishonoured with remarks 'Insufficient Funds'. However, when the same cheques were deposited for the second time, the cheques were not honoured by the bank with remark 'NON CTS'. The directions issued by the

1 Criminal Petition No.896 of 2022 dated 29th November, 2022.

2 Criminal Appeal No.1497 of 2022 dated 11th October, 2022.

Reserve Bank of India indicate that Non CTS cheques were valid for stipulated period. The directions were updated on 31st October, 2022 which indicate that banks have been advised to issue only CTS 2010 standard compliant cheques from September 30, 2012. Earlier, there were separate clearing sessions for non-CTS cheques. However, they wer discontinued with effect from 31st December, 2018. As of now, NON-CTS cheques cannot be presented in CTS. Bank have been advised to withdraw the non-CTS cheuques from the customers. However, NON-CTS cheques remain to be valid as a negotiable instrument. The Accused will have to establish during the trial whether there was sufficient funds as the same cheque which was deposited earlier was dishonoured on account of 'Insufficient Funds'. The contention of the Petitioner that the cheque was issued as security is disputed and it is for the Accused to prove the defence in the trial. The other contention of the Petitioner is that an amount of Rs.23,50,000/- was paid and therefore, in the light of Section 56 of N.I. Act, the cheque ought to have been entrust in devoid of merits. The disputes that the amount of Rs.23,50,000/- was related to the liability which is accrued in respect to the cheques which were deposited and dishonoured.

10. Mr. Walawalkar has relied upon decision of Supreme Court in the case of *Laxmi Dyechem V/s. State of Gujarat and Others*³

11. The Sessions Court has considered the grounds urged by the Petitioner and rejected the revision application by assigning cogent reasons.

12. It is pertinent to note that the complainant had satisfied all the requisite procedural safeguards while initiating the proceedings under Section 138 of N.I. Act. The case of the complainant is that the cheques were issued in discharge of legally enforceable liability. Initially the cheques were dishonored with remarks 'Insufficient Funds'. Subsequently, the bank memo indicate that the cheques were non-CTS. The same cheques were deposited for the second time on instructions of the Accused and not *suo moto* by the complainant. On account of the requisite circular of the Reserve Bank of India the cheques were NON-CTS. The Accused ought not to have insisted complainant to redeposit the cheque. The learned Sessions Judge has appreciated the grounds and has assigned reasons while rejecting the revision application. The grounds urged by the Petitioner stating that the cheques were issued by way of security and there is non-compliance of Section 56

³ (2012) 13 SCC 375

will have to be agitated during the trial. *Prima facie* case is made out for issuance of process. No case is made out to interference in the Order issuing process and the Order passed by the Sessions Court in exercising powers under Section 482 of Code of Criminal Procedure. Hence, all the Petitions are devoid of merits and deserves to be dismissed.

ORDER

- i. Criminal Writ Petition No.2451 of 2022; Criminal Writ Petition No.2461 of 2022; Criminal Writ Petition No.2464 of 2022; Criminal Writ Petition No.2465 of 2022; Criminal Writ Petition No.2463 of 2022; Criminal Writ Petition No.2453 of 2022 and Criminal Writ Petition No.2454 of 2022 stand dismissed.
- ii. The trial is expedited.

(PRAKASH D. NAIK, J.)