IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2786 OF 2023
IN
CRIMINAL WRIT PETITION NO. 6453 OF 2021

Indreshkumar Sidhnath Dubey ...Applicant
Versus
State Of Maharashtra And Anr ...Respondents

Mr. G.R. Dwivedi Advocate for Applicant/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

P.C.:-

1. This is an application in Criminal Writ Petition No. 6453 of 2021 which has been disposed off vide order dated 2nd May 2023.

2. The applicant in this application has made following prayers:-

> *"(b) this Hon'ble High Court be pleased to consider the stay and relief granted in favour of the Petitioner by Hon'ble High Court in Civil Suit as well as proceedings under Section 13 of the Maharashtra-Money Lending (Regulation) Act, 2014 by Maharashtra Authorities, so that the illegal proceedings of 138 N.I. Act be observed as illegal and not maintainable. Order dated 2.5.2023 in W.P. 6453/2021 be allowed for interim".*

3. The applicant had challenged the order issuing process dated 29th March 2017 in C.C. No. 755/SS/2018 for offences under Section 138 of Negotiable Instruments Act, by preferring Criminal Writ Petition No.6453 of

2021, on several grounds.

4. Vide order dated 2nd May 2023, the said petition was dismissed by this Court. It was argued that cheque in question were post dated cheques. The order of condonation of delay of 15 days was passed without giving opportunity of hearing to applicant. The third submission was about money lending by complainant without license. While dismissing the petition, this Court had 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 liability or not being question of fact needs to be adjudicated at an appropriate stage. From averments in complaint, prima facie it appears that on the date of offence, there was legally recoverable liability. It was further observed that, issue of condonation of delay has been considered by Revisional Court. The ground of money lending being question of fact needs to be decided at on appropriate stage.

5. By preferring this interim application, the applicant has contended that, Respondent No.2 is in money lending business. Loan was obtained by applicant. Mortgage deed was executed and cheques were taken by complainant as security. Cheques were misused. The Respondent No.2 has no money lending license. This is evident from RTI report. It is also contended that, injunction has been granted in some civil proceedings.

6. The issue of money lending was urged in Criminal Writ Petition No. 6453 of 2021 which has been dismissed by observing that, it is question of fact and needs to be raised at an appropriate stage. All the contentions were considered by this Court while rejecting the petition filed by applicant. The prayer in this application cannot be granted.

ORDER

(i) Interim Application No. 2786 of 2023 is rejected.

(PRAKASH D. NAIK, J.)