



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1453 OF 2024

Parth Bhadresh Mehta

.. Petitioner

Versus

The State Of Maharashtra And Another

.. Respondents

Mr. A. D. Ostwal, Advocate for the Petitioner.
Smt. C. C. Kutti, APP for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATE : 31st JULY, 2025.

PER COURT :-

. Heard learned advocate for the petitioner.

2. The petitioner has challenged an order of issuance of process dated 27.06.2017 passed by the learned J.M.F.C., Aurangabad in S.C.C. No. 3601/2017 filed by present respondent Nos. 1 and 2 for the offence punishable under Section 138 of the Negotiable Instruments Act (for short "N.I. Act").

3. It is the main contention of the present petitioner that, he was only a non executive director in the company - accused No. 1 in the complaint. There is no sufficient averment showing that the

petitioner is responsible for day to day affairs of the accused No. 1 company. He further submits that, the complaint was filed and immediately on the same date the learned J.M.F.C. passed an order of issuance of process without following procedure under Section 202 of the Code of Criminal Procedure (for short “Cr.P.C.”). He relies upon the order passed by this Court in Criminal Application No. 1182/2017 at Principal Seat at Mumbai in the case of Parth Bhadresh Mehta and another Vs. The State of Maharashtra and another in respect of the same petitioner in which this Court allowed the writ petition and quashed and set aside the proceedings under Section 138 of the N.I. Act.

4. The learned advocate for the petitioner also relies upon the judgments in the cases of (i) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another reported in (2005) 8 SCC 89 and (ii) N. K. Wahi Vs. Shekhar Singh and others reported in (2007) 9 SCC 481. This Court, however, finds that in the present case both these cases are not applicable.

5. This Court finds that, the order under challenge is dated 27.06.2017. Though it is submitted that the learned Magistrate

has not followed the procedure under Section 202 of the Cr.PC. and issued process on the very day, on record, it is seen that the complaint was filed on 06.06.2017. On 19.06.2017 the verification was recorded and it is thereafter on 27.06.2017 the process was issued. The order shows that the learned J.M.F.C. considered the verification. He also heard learned advocate for the complainant. It is also considered that the demand notice dated 06.05.2017 was sent to all the accused on their address. It is affirmed on 27.06.2017 by the Assistant Superintendent of the concerned Court. The documents enclosed were also seen by the Court and it is only thereafter the Court has issued the process. This Court is, therefore, not convinced that the order passed is without application of mind.

6. This Court is also on the point of delay and laches. The order of issuance of process is dated 27.06.2017. The learned advocate submits that compromise talks were going on between the parties. He submits that, one other complaint was withdrawn after settlement between the parties on 15.03.2018 and he was hopeful that the present case also would be settled. He further pointed out that the petitioner was non executive director till

November 2017 and he resigned on 01.11.2017. This Court, however, finds that in the complaint there is specific averment in paragraph No. 3 that all the directors are participating in the affairs of the said company and the accused persons also know the entire transaction. Even considering that talks of settlement were going on, till it cannot be believed that a person would wait for 5-6 years for compromise. The petition is filed in this Court on 12.07.2024 and the same is circulated for the first time on 17.07.2025. This also shows that the petitioner is not vigilant. For all these reasons this Court is not with the petitioner on merits as well as on the ground of delay and laches.

7. The learned advocate for the petitioner relies on earlier judgment in Criminal Application No. 1182/2017. It is seen that, the petitioner therein was prompt in approaching this Court and had filed application immediately.

8. Thus, from all these facts this Court does not find that a case is made out to issue notice to respondents. The petition thus stands dismissed.

(KISHORE C. SANT, J.)

PS.B.