IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1200 OF 2024

Janardan Ramsuchit Dubey … Petitioner

V/s.

S. Mani & Anr. …. Respondents

PRACHI PRANESH NANDIWADEKAR
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Date: 2026.10.16 11:42:52 +0530

Mr. Mahendra Swar i/by K. C. Pandey, for the Petitioner.
Ms. Nishi Shah i/by Mr. Abhishek Upadhyay for Respondent No.1.
Mr. S.V. Walve, APP for the Respondent No.2-State.

CORAM : MADHAV J. JAMDAR, J.

DATED : 13 OCTOBER 2026

P. C. :-

1. Heard Mr. Swar, learned counsel appearing for the Petitioner and Ms. Shah, learned counsel appearing for the Respondent No.1.

2. The challenge in this Writ Petition is to the legality and validity of order dated 18th September 2017 passed by the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai and the order dated 12th April 2023 passed by the learned Additional Sessions Judge, City Civil and Session Court, Borivali Division, Dindoshi in Criminal Revision Application No.145 of 2019.

3. Learned counsel appearing for the Petitioner has pointed out the averments made in the complaint and more particularly

paragraph no.7 and verification recorded on 15th July 2017 and more particularly paragraph no.5 of the same. Learned counsel has also relied on judgement of the Supreme Court in the case of ***Surendra Sanganeria Vs. Ramesh Rijhumal & Anr.***[1]

4. Learned counsel, therefore, submitted that the order issuing process be quashed and set aside. He further pointed out paragraph no.4 of the order dated 12th April 2022 passed the learned Additional Sessions Judge and submitted that the learned Sessions Judge has committed mistake by relying on material which has been produced at the time of hearing of the revision.

5. On the other hand, learned APP appearing for the Respondent No.2-State supported the impugned order.

6. Perusal of the record shows that the Petitioner has raised following contentions in paragraph nos. 6 to 9 of the complaint which reads as under :-

> "6. The Complainant states that after the above said cheques at Exhibit – 'B' were dishonored the complainant approached the Accused and informed him that the said cheques were dishonored with remark Account Closed. The complainant state that the Complainant again requested the Accused that the Accused should pay the amount in cash otherwise he shall be prosecuted. The Accused did not pay the dues and therefore the Complainant instructed his Advocate to send legal notice to the Accused at his business address and accordingly my advocate

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sent notice dated 26/04/2017 to the Accused by Registered Post AD and calling upon to pay the cheque amount in cash within 15 days from the date of receipt of this notice failing which the Accused shall be prosecuted.

7. The complainant states that the said notice was send to the Accused by way Registered Post AD but till date not received the acknowledgement for the same and/or not received any reply from the Accused. The copy of notice with Registered Post AD receipt is hereto annexed and marked as Exhibit "C" (Colly).

8. The Complainant states that in spite of the service and knowledge of the said notice at Exhibit – 'C', the Accused did not pay the said amount of the said dishonoured cheque within 15 days and thereby committed offence under section 138 r/w 141 of the N.I. Act.

9. The Complainant states that the notice at Exhibit – 'C' was issued within time and this complaint is not barred by the Limitation provided under the Act and the same is filed within time."

7. In Verification Statement, the Respondent No.1 i.e. original Complainant has stated as follows in paragraph nos.4 and 5 :-

"4. The said cheques bearing Nos. "023897" of Rs. 5,00,000/-, "023898" of Rs. 4,00,000/- & "023896" of Rs. 5,00,000/- were requested to be deposited for encashment by April 2017 which was accordingly deposited by me. For payment but the accused had purposely closed the account and did not inform the complainant. The complainant made a call to the accused started giving evasive reply therefore having no other alternative the complainant gave legal notice on 26/04/2017 as the complainant received information for the bankers on 10th April 2017, 12th April 2017 & 19th April 2017 respectively for the individual cheques.

5. The accused purposely closed the account with intention to cheat. The accused is presumed to have received the notice dated 26/04/2017. The complainant therefore has filed the present complaint within the limitation period."

8. The learned Metropolitan Magistrate by impugned order dated 18th September 2017 issued the process under Section 138 of the Negotiable Instruments Act, 1881.

9. The Petitioner challenged the said order by filing the Criminal Revision Application No.145 of 2019. While dismissing the said Revision Application, the learned Additional Sessions Judge has observed as follows in paragraph nos.4 and 5 :-

> "4. As against this Ld. Adv for the original complainant/ Respondent no. 1 submit that in view of provision of section 14(E) of the Evidence Act, presumption regarding the delivery of the notice has to be drawn. He further submits that as per section 27 of General Clauses Act, there is a presumption that if notice is issued by RPAD on the correct address then service of said is to be presumed. According to him the decision relied by the petitioner is not helpful, since it was relating to notice by courier & not by RPAD. He further submit that the petitioner has suppressed the fact that the complainant has produced the copy of consignment track record of the postal department which shows that on 26.04.2017 consignment was delivered to the post and on 27.04.2017 the consignment i.e. notice was delivered to the addressee i.e. the petitioner. In light of the above, the cited decisions has no application in the present case. He further submits that the petitioner appeared before the Trial Court, and has participated in inquiry. His plea has also been recorded by the Magistrate, in such circumstances, the Revision is devoid of merits needs to be rejected.
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> 5. After considering the material on record and the arguments of the revision petitioner, it is seen that the only point raised is regarding the service of notice and not mentioning the date of service of demand notice in the complaint. In para 7 & 8 of the complaint, the complainant has mentioned that he has not received the acknowledgment. However, it is seen that along with the complaint the

> complainant had produced track record of postal department wherefrom it is seen that the consignment i.e. the demand notice was delivered to the addressee i.e. the present petitioner, on 27.04.2017. In verification affidavit the fact has been mentioned. Thus, it is seen that there was sufficient material available before the Magistrate to hold that after dishonor of cheque demand notice was issued by the complainant to the accused/petitioner."

10. Thus, after perusal of the record, following factual position emerges :-

(i) The Respondent No.1 i.e. Original Complainant received information from his banker about dishonoured of cheques which are subject matter of the said complaint on 10th April 2017, 12th April 2017 and 19th April 2017.

(ii) The statutory notice under Section 138 of the N.I. Act has been sent on 26th April 2017 by RPAD, the said notice was delivered to the present Petitioner on 27th April 2017 and complaint has been filed on 7th June 2017.

11. Thus, in view of the above factual position, it is required to consider the decision of the Supreme Court in the case of ***Surendra Sanganeria (supra)*** which has been relied upon by the learned counsel appearing for the Petitioner. The relevant portion is paragraph nos. 4 and 5 which reads as under :-

"4. Learned counsel appearing in support of the appeal has drawn our attention to a fact, which apparently has not been properly dealt with either in revision or by the High Court in the criminal writ jurisdiction. Learned counsel has pointed out that in the complaint filed by the respondent No.1, no mention has been made as to when the notice contemplated under clause (b) of the proviso to Section 138 of the aforesaid Act had been received by the appellant. In paragraphs 3,4 and 5 of the complaint, it has been stated that the memo from the bank indicating that the cheques had been dishonoured on account of insufficient funds the dated 17th February, 2005, had been received, and, thereafter, a notice was sent on 1st March, 2005, calling upon the appellant to make the payment of the dishonoured cheques, worth Rs.91,325/- drawn on the Tamil Nadu Mercantile Bank Ltd., Mandvi, Mumbai-3 Branch, within 15 days after the receipt of said notice.

However, except for mentioning that the notice had been sent on 1st March, 2005, and that the same had been received by the appellant, no date has been mentioned as to when the same was received by the appellant. The said fact becomes relevant on account of the fact that the period for computing the cause of action and the limitation prescribed under Section 142 cannot be determined until and unless the date of receipt of the notice is indicated. Moreover, paragraph 5 of the complaint makes it clear that a letter written to the Postal Department has still not been replied to by the said department.

5. Although, certain other points have also been raised on behalf of the appellant that the cheques had not been signed by the appellant in his personal capacity but as a Director of Amber Processor and that the notice also did not contain a demand for the amount of the cheques separately, we do not think it necessary to go into the said question, which had been considered and decided by the High Court, since in our view the appeal must succeed on the point which has been raised regarding non-mentioning of the date of the receipt of the notice in the complaint. It may not be out of place to mention that the Sessions Court, while dealing with the matter had merely indicated that since the notice had been sent, as would be evident from the receipt given by the courier, presumption must be drawn in terms of Section 114(e) of the Evidence Act that the

> notice had been sent and received in the official course of business. The High Court, unfortunately, has not even dealt with the matter."

12. Although it is correct that the date of receipt of notice has not been set out in the Criminal Complaint, however, the perusal of the record shows that the statutory notice issued under Section 138 of the Negotiable Instruments Act, 1881 has been received by the Petitioner and the complaint has been filed within limitation.

13. Thus, at this stage, the order issuing process cannot be interfered with. However, the contention which the Petitioner has raised in this petition are kept open for deciding the same at the stage of trial.

14. Accordingly, no interference in the impugned order is warranted particularly in Writ jurisdiction which is discretionary and extraordinary.

15. Accordingly, the Writ Petition is disposed of.

[MADHAV J. JAMDAR, J.]