

**ORDER BELOW EXH. 44 IN C. C. NO. 246/SS/2019**

01. This is an application made by accused Nos. 1 to 3 for dismissal of the complaint under section 203 of the Code of Criminal Procedure (for short "*the Cr.PC.*").

02. The accused have sought dismissal of the complaint on the ground that, the complainant has not made specific averments complying with the requirements of section 141 of the Negotiable Instruments Act (for short "*the N.I. Act*"). It is also contended that, accused Nos. 2 and 3 are not liable and responsible for the business of accused No. 1. It is lastly contended that, accused No. 3 is not the drawer of the cheque.

03. The complainant has opposed the application by reply at Exh. 49. It is submitted that, the application is not maintainable. The accused are delaying the proceeding by filing frivolous application. On these major grounds, the complainant has prayed for rejection of the application by imposing exemplary costs.

04. Heard both sides. Perused record. The Ld. Advocate for accused has relied upon following case law.

*I) Ashok Sevakramani and Ors. V/s. State of Andra Pradesh and Anr. 2023 LiveLaw (SC) 622.*

*II) Siby Thomas V/s. M/s. Somany Ceramics Limited 2023 LiveLaw (SC) 869.*

*III) Alibaba Nabibasha V/s. Small Farmers Agri Business Consortium and Others CDJ 2020 DHC 735.*

05. The case is for offence punishable under section 138 read with section 141 of the Negotiable Instruments Act. The plea

of accused Nos. 1 to 3 was recorded on **08.01.2020**. Thereafter, the authorized representative of complainant has filed evidence affidavit on **21.03.2020**. The matter was pending for cross-examination. This is when, the application under consideration was made.

06. In a summary trial, the complaint can be dismissed only under the contingencies mentioned in section 256 of the Cr.P.C. However, no such contingency has arose in the instance case. In the case of ***Subramaniam Sethuraman V/s. State of Maharashtra & Anr in Appeal (Crl.) No. 1253/2002 decided on 17.09.2004 of the Hon'ble Supreme Court***, it is held that, the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extra ordinary remedy under section 482 of the Cr.P.C. and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case.

07. In ***Expeditious Trial of Cases Under Section 138 of the N.I. Act in Suo Motu Writ Petition (Criminal) No. 2/2020 decided on 16.04.2021***, the Constitution Bench of the Hon'ble Supreme Court has held that, judgment in the case of ***Subramaniam Sethuraman (Supra)*** has interpreted the law correctly. The Hon'ble Supreme Court has reiterated that, there is no inherent power of Trial Court to review or recall the issue of summons. Not being a summons case instituted otherwise than upon complaint, the provisions of section 258 of the Cr.P.C. cannot be invoked in the present case.

08. I have carefully gone through the decisions cited on behalf of the accused. The said decisions are in respect of the mandatory requirements under section 141 of the N.I. Act and examination of the documents at the time of issuance of process. The accused would have a good defence. However, that is not the ground to dismiss the complaint. The facts and circumstances in the decisions cited on behalf of accused are not identical to those in the case at hand. Thus, the said decisions cannot be made squarely applicable to the case at hand at this pre-trial stage.

09. As discussed above, the plea of accused was recorded on **08.01.2020**. Thereafter, the authorized representative of complainant has filed evidence affidavit on **21.03.2020**. The matter was pending for cross-examination. This is when, the application under consideration was made. The accused have not challenged the order of issuance of process. The application has been made by quoting section 203 of the Cr.P.C. The stage in the present case is of cross-examination. Thus, section 203 of the Cr.P.C. cannot be invoked at this stage. It is evident that, the present application has been made only with the intention to delay the proceeding. Thus, the application is liable to be rejected by imposing exemplary costs. Hence, order :

**ORDER**

Application Exh. 44 is rejected with costs of Rs.5,000/- payable by the accused to the complainant.

Sd/-

**(M. V. Phade)**

Metropolitan Magistrate,  
7<sup>th</sup> Court, Dadar, Mumbai

Date : 28.06.2024