

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

CRI. WRIT PETITION NO. 3121 OF 2014

Mr. Dharampuri Narayan Jindam ... Petitioner.

V/s.

The State of Maharashtra & Anr. ... Respondents.

None for the Petitioner.

Mr. V.B. Konde-Deshmukh, APP for the State.

Mr. Jatin P. Shah, Advocate for Respondent No.2.

**CORAM : M.L.TAHALIYANI,J.
DATE : 30 JANUARY, 2015**

P.C. :

1 None for the Petitioner. Heard Mr. Jatin Shah, Advocate for the Respondent No.2 and learned APP for the State.

2 This writ petition impugns the order passed by the Sessions Judge, dismissing the revision filed by the petitioner against the order of the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai. The Petitioner has been convicted by the trial Magistrate for the offence punishable under section 138 of the Negotiable Instruments Act and has been sentenced to suffer simple imprisonment till rising of the court and to pay compensation amount of Rs.5,25,000/-. The petitioner

challenged the said order before the Sessions Court in a revision. The revision had been dismissed and therefore, this petition.

3 The issues raised by the petitioner before the trial court were multifold. The first issue raised by him was that respondent nos. 1 and 2 had no capacity to extend loan of Rs. 5 lakhs to the petitioner. The second issue raised before the trial court was that the acknowledgment in respect of the receipt of Rs.5 lakhs by the petitioner from respondent no.2 was obtained by force. It was submitted before the learned Magistrate that petitioner's signatures were obtained by the respondent no.2 forcibly in the presence of one Tukaram Seth. Thirdly, it was also stated before the Magistrate that the amount had been repaid by the petitioner to respondent no.2.

4 I have gone through the judgment and evidence of the witnesses. Learned Magistrate has rightly observed in his judgment that since the signature on the receipt has been admitted by the petitioner, it was for the petitioner to demonstrate that his signature was obtained by force. Though it was stated before the learned Magistrate that the signature was obtained by force in the presence of one Tukaram Seth; said Tukaram Seth has not been examined as witness for which there is no explanation. As far as capacity of respondent no. 2 for the amount of Rs. 5 lakh is concerned, it

was submitted on behalf of respondent no.2 before the learned Magistrate that respondent no. 2 had retired from BSNL and that he had received his retirement benefit to the extent of Rs. 12 lakhs.

5 The issue with regard to security was also raised. It was stated that the cheque was issued by way security. However, there is no material to support the contention of the petitioner.

6 The learned Magistrate has rightly convicted the petitioner and the learned additional Sessions Judge has rightly rejected his revision application. I do not find any merit in the present writ petition.

7 Writ petition stands dismissed.

8 Learned Magistrate to take necessary steps for execution of the order.

(JUDGE)

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