

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

CRIMINAL WRIT PETITION NO. 4753 OF 2014

Kishor Mehta

... Petitioner.

V/s.

State of Maharashtra & Anr.

... Respondents.

Mr. Ranbir Singh a/w Mr. Abhishek Prabhu i/by Thakore Jariwala & Associates for the Petitioner.

Mr. V.B.Konde-Deshmukh, APP for the State- Respondent No.1.

Mr. H.S. Venegavkar, Advocate for the Enforcement Director.

**CORAM : M.L.TAHALIYANI,J.
DATE : 11th FEBRUARY, 2015**

P.C. :

1 Heard learned counsel appearing for the Petitioner, learned additional public prosecutor for the State and the learned Advocate appearing for the Enforcement Director.

2 The petitioner/applicant is prosecuted for the offence punishable under sections 56(1)(ii) of the Foreign Exchange Regulation Act, 1973 read with section 49(3) & (4) of the Foreign Exchange Management Act, 1999. The petitioner had allegedly failed to comply with the notice issued under section 40 of the Foreign Exchange Regulation Act.

3 The learned counsel for the petitioner submits that there is no proof that the summons was ever served upon the petitioner. Moreover the documents on which the respondents rely were not annexed to the complaint. It is further submitted that the petitioner was not in the country when the summons was issued. In my opinion, as far as the contentions that the petitioner was not in the country is concerned, it is to be established on the basis of the factual position and that can be agitated before the trial Magistrate. The learned Advocate has relied upon the judgment of the Hon'ble Supreme Court in support of his contention that the documents needed to be annexed to the complaint. I may reproduce the relevant portion of the said judgment.

“There was suppression and also material omission in non-mentioning of reply sent by the appellant to the Opportunity Notice, in the complaint. Further, to substantiate the averments in the complaint, not even a single original document was enclosed. It is not known as to, on what material the Additional Chief Metropolitan Magistrate applied his mind, while taking cognizance of the statutory offence.”

In this regard it may be mentioned here that the said observations were made by the Hon'ble Supreme Court in the facts of the case before the Supreme Court. There is no law that the documents on which the complainant relies shall be

annexed to the complaint and the copies thereof shall be given to the accused at the time of service of the summons. I do not find any substance in the petition.

4 The petition stands dismissed.

(JUDGE)

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