

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

WRIT PETITION NO. 3643 OF 2016

Manoj Kapoor

.. Petitioner

Vs.

The State of Maharashtra & Ors.

.. Respondents

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Mr.Manoj Kapoor, Petitioner present in person.

Mr.N.B. Patil, APP for the Respondent - State.

Mr.Vivek Patil i/b. M/s.Vivek Patil & Associates, Advocate for Respondents.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 28, 2017.

P.C. :

The petitioners have challenged the proceedings pending before the Metropolitan Magistrate 28th Court at Esplanade, Mumbai for the offence punishable under Section 138 of the Negotiable Instruments Act. The complaint was filed by respondent no.2.

2 In the complaint it was alleged that the present petitioner had issued a cheque which was dishonoured while deposited by the complainant. It is alleged that the petitioner was the guarantor to the loan borrowed by National Food Products (India) Pvt. Ltd. The petitioner issued cheque dated 18th August, 2011 for a sum of Rs.56,37,900/- to the complainant.

3 The petitioner who appeared in person submitted that false and frivolous complaint have been filed against him. It is submitted that respondent no.2 sought a guarantee and then tampered with Letter of Guarantee for three promissory notes aggregating to Rs.18,60,000/- with a intention to extract all their dues payable by respondent nos.3 and 4 from the petitioner. The petitioner's Letter of Guarantee was for limited amount which has been paid by respondent Nos.3 and 4. The Letter of Guarantee is tampered with material alterations without consent of petitioner. It is submitted that blank cheque was given along with Letter of Guarantee in good faith to respondent no.2. The said cheque is misused by complainant. The respondent nos.3 and 4 are borrowers and the petitioner is not concerned with their business.

4 Learned counsel for the respondent-complainant submitted that the arguments advanced by the petitioner can be considered at the time of trial. The complainant has made out a case in the complaint for which the process has been issued. The petitioner - accused is the signatory of the cheques which has been dishonoured and which is the subject matter of the present complaint.

5 The case of the complainant is that the petitioner – accused had signed the cheque which was deposited and was dishonoured. The grounds raised by the petitioner cannot be considered at this stage. The denial of liability on the ground of tampering of documents is the defense of the petitioner which can be considered during trial. This is not a stage to appreciate the contention raised by the petitioner. Learned Magistrate has issued the process by *prima facie* coming to the conclusion that the petitioner is the person who has signed and issued the cheque which has been dishonoured. No case is made out to interfere in the proceedings which are pending in the trial Court.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Writ petition is dismissed;
- (ii) All the issues raised by the petitioner are kept open during the course of trial.

(PRAKASH D. NAIK, J.)