IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1649 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1651 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1653 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1656 OF 2018

Mr. Girdhar Goenka … Petitioner

Versus

M/s. Kotak Mahindra Bank Ltd. & Anr. … Respondents

Ms. Neha Mehta for Petitioner in all Writ Petitions.
Mrs. N. S. Jain, APP for State in Writ Petition No. 1649 of 2018.
Ms. S. S. Kaushik, APP for State in Writ Petition No. 1651 of 2018 and Writ Petition No. 1653 of 2018.
Mrs. M. R. Tidke, APP for State in Writ Petition No. 1656 of 2018.

CORAM : NITIN W. SAMBRE, J.
DATE : APRIL 19, 2018.

P.C. :

. The Petitioner is arraigned as an accused in a complaint bearing No. 4214/SS/15 (Old No. 181/M/11) preferred by the

Respondent No.1 for the offence punishable under Section 138 of the Negotiable Instruments Act, which is pending before the Court of learned Metropolitan Magistrate, 58th Court at Bandra, Mumbai since 2011. Since the learned Magistrate has been satisfied that the case for issuance of process was made out, passed the order on 30th January 2014 in Criminal Case No. 4214/SS/15.

2. In the aforesaid background, the present Petitioner claimed that he ought not to have been arraigned as an accused, as the Applicant resigned from the Accused No. 1 – Company with effect from February 19, 2010. The copy of Form 32 issued under the Companies Act is sought to be relied upon.

3. When confronted about the Acknowledgment of Form 32, issued by the Registrar of Companies, the Petitioner is not in a position to produce acknowledgment as regards the production of Form 32. Leave apart, the copy of the resolution accepting resignation of the Petitioner by the Accused No. 1 – Company is also not produced.

4. The fact remains that the order of issuance of process was passed in 2014 and for last four years no steps were taken by the Petitioner, based on the aforesaid plea that he is not a Director of the Accused No.1 – Company when the cheque was issued.

5. Even if presuming that such was a case that Petitioner tendered resignation, having observed that there is no evidence to substantiate the same before this Court in the present proceedings. The plea raised by the Petitioner that, Petitioner resigned as Director as reflected in the Form 32, and Petitioner is not associated with the Accused No.1 – Company, in the light of above cannot be accepted. No case is made out. As such, Writ Petition is dismissed.

6. Since the issue involved in all the Petitions is identical, for the purpose of deciding all these Writ Petitions, facts of Writ Petition No. 1656 of 2018 are to be taken into account.

(NITIN W. SAMBRE, J.)