

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1052 OF 2017

Kirit V. Satra	...	Petitioner
Versus		
Yes Bank Limited & Anr.	...	Respondents

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Mr.S.K.Dubey with Ms.Bindu Gupta i/b. Sarwankar & Co.,
Advocate for the Petitioner.

Mr.Yashpal Thakur i/b. PKA Advocates, Advocate for the Respondent No.1.

Mr.R.M.Pethe, the Additional Public Prosecutor for the Respondent No.2/State.

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CORAM : A.M.BADAR J.

DATED : 14th FEBRUARY 2020.

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule is made returnable forthwith. Heard finally
by consent of parties.

3 By this petition, the petitioner/accused is challenging the Judgment and Order dated 16th January 2017 passed by the learned Additional Sessions Judge in Criminal Revision Application No.1050 of 2016 and thereby rejecting the Revision Petitioned filed by him by which process issued by the learned trial Court for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 was sought to be challenged.

4 Heard the learned Counsel appearing for the petitioner/original accused. He argued that way back on 20/08/2015, a notice was issued by the petitioner/original accused to the respondent/original complainant Yes Bank to return blank cheques taken at the time of sanction of loan. The said Bank gave reply to this notice on 03/09/2015. However, notice dated 20/08/2015 and reply dated 03/09/2015 are not pleaded in the complaint and this fact is suppressed by the complainant. In submission of the learned Counsel for the petitioner, subsequently those cheques were presented for encashment and thereafter legal notice dated 10/12/2015 came to be issued. Therefore, Order of issuance of process needs to be quashed and set aside.

5 The learned Counsel for the respondent herein/
original complainant opposed the Petition by contending that on
07/03/2017 plea of the petitioner/original accused has already
been recorded. On 09/01/2018 as well as 08/07/2019 evidence
affidavit have already been filed before the learned trial
Magistrate and, therefore, the petition is not maintainable. He
further argued that what is urged before this Court is a matter of
trial.

6 I have considered the submission so advanced and
perused the material placed before me.

7 The loan facility was availed by the petitioner/original
accused in the year 2012. On 20/08/2015, he issued a letter to
the bank requesting the respondent Bank to return the cheques
which were taken at the time of sanctioning and disbursement of
loan. The Bank replied to that notice dated 03/09/2015 that the
cheques are for repayment of loan.

8 It is thus clear that the disputed questions of facts are involved so far as this aspect is concerned. It is not necessary to plead each and every thing in the compliant and non-pleading of these facts are not fatal to the prosecution for the offence punishable under Section 138 of the Indian Penal Code. If this constitutes defence, then the petitioner is at liberty to agitate the same during the course of the trial.

9 In this view of the matter, the Petition is devoid of merit and the same is dismissed.

(A.M.BADAR, J.)

Raju D.
Gaikwad

Digitally signed
by Raju D.
Gaikwad
Date: 2020.02.18
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