

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

CRIMINAL APPLICATION NO.977 OF 2021

Mr. Amit Gada ... Applicant
Vs
The State of Maharashtra
& Anr. ... Respondents
...

Mr. Premlal Krishnan with Preston Dias i/by Pan India
Legal Services LLP for the Applicant.
Mr. A.D. Khamkhedkar APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : NOVEMBER 26, 2021.

P.C. :

This application challenges the 'Issue Process' order dated 15th October, 2019 under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.425/SS/2019 passed, by the Metropolitan Magistrate, 58th Court, Bandra, Mumbai.

2 The criminal case, in question wherein applicant is accused is founded on the document dated 11th January, 2019 executed by the applicant, inter-alia acknowledging debt he owes to complainant, pursuant to which he had drawn a cheque in favour of the complainant, in the sum of Rs.49 Lakhs.

3 Applicant's case is that document dated 11th January, 2019 is unenforceable invalid document, since it was not executed with his free will but under 'Coercion', within the meaning of Section 15 of the Indian Contract Act, 1872, which is evident from complaint filed with police on 21st September, 2019. The learned counsel for the applicant relies on 'non-cognizable complaint', which is at Page 100 of the application.

4 Be that as it may, non-cognizable complaint was lodged nearly after nine months. In consideration of the facts of the case, in my view, the applicant has challenged

the “Issue Process” order on the ground that there was no enforceable debt or liability as on the date on which cause of action arose. However, in view of presumption under Section 139 of the Negotiable Instruments Act, 1881, the defence sought to be pleaded by the applicant cannot be gone, into under, Section 482 of the Code of Criminal Procedure, 1973.

5 That for the reasons stated above, application deserves no consideration. It is dismissed.

(SANDEEP K. SHINDE, J.)