

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3522 OF 2015

Rajesh Kumar Kedia s/o Late
Onkarmal Kedia

..APPLICANT

VERSUS

M/s Videocon Industries Ltd. & anr. ..RESPONDENTS

Mr S.L. Bhapkar, Advocate for applicant;
Mr L.B. Pallod, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 2nd September, 2015

ORAL ORDER :

This is an application by the accused, who is facing criminal trial, for offences punishable under sections 138 and 142 of the Negotiable Instruments Act.

2. After recording of statement of the present applicant, under section 313 of the Code of Criminal Procedure, the applicant moved applications Exhs.167 and 175, with an intention to summon certain witnesses, which came to be rejected by the Trial Court, vide orders dated 9th January, 2015 and 29th January, 2015, respectively. Those orders have been further confirmed in appeal.

3. Thereafter the applicant has moved application Exh.191, seeking permission of the Court to examine himself in support of his defence, which came to be rejected by the Trial Court by order dated 25th June, 2015.

4. The bone of contention raised by Mr Bhapkar, learned Counsel appearing on behalf of the applicant is that even if the applicant is an accused, he has every right apart from scheme of section 313 of the Code of Criminal Procedure, to examine himself in defence.

5. Learned Counsel Mr Bhapkar has relied upon the order dated 24th October, 2013, passed by this Court, in the matter of **Bhimrao Divaji Gaikwad vs. The State of Maharashtra**, in **Criminal Application No.5393 of 2013**, so as to substantiate his contentions. He has placed reliance upon the observations made by this Court in paragraphs 8 and 9 of the said judgment.

6. According to Mr Bhapkar, refusal on the part of the Court below to allow the applicant to examine himself in his defence, is illegal and as such, the applicant is entitled to examine himself by allowing application Exh.191.

7. Mr Pallod, learned Counsel appearing on behalf of the respondent has supported the impugned order. He has invited my attention to the conduct of the present applicant during the course of proceedings of the criminal complaint and submits that the application Exh.191 is moved with a *mala fide* intention to protract the trial. He would further urge that the order passed by the learned Court below is well reasoned and records very approach of the applicant during the trial. According to him, the application being devoid of merits, deserves to be rejected.

8. Upon considering rival contentions of the parties, it is not in dispute that the statement of the present applicant-accused was recorded under section 313 of the Code of Criminal Procedure and the documents, which he intend to establish through his evidence now, were very much available to him. Leave apart, the earlier applications at Exhs.167 and 175 calling for expert's opinion, and for summoning Anupkumar Kediya, in my opinion, were rejected subsequent to the recording of statement of the applicant under section 313 of the Code. The applicant thereafter has moved the present application after lapse of period of about six months from the date of recording of his statement under section 313 of the Code.

9. The learned Trial Court has recorded and appreciated the conduct of the present applicant and termed the same as an intention to protract the trial.

10. Even though the learned Counsel appearing on behalf of the applicant has relied upon the order of this Court in the matter of Bhimrao Divaji Gaikwad (cited supra), yet the observations made in paragraph 11 of the said judgment need to be taken into account, which read thus :-

“11. Thus, permission to adduce defence evidence can be refused only on the following grounds; namely, the prayer is made for the purpose of vexation, or delay, or for defeating the ends of justice. It is clear that unless the satisfaction in that regard is arrived at, it would not be permissible for the trial Judge to refuse permission to adduce defence evidence. In this case, the learned Judge has not come to such a conclusion.”

11. In the light of the above observations, in my opinion, no case for interference is made out. Criminal Application, therefore, stands rejected.

(N.W. SAMBRE, J.)

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