

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL WRIT PETITION NO. 1025 OF 2015

- 1) Naveen S Luthara,
Age:.....yrs, Occu: Director and
authorised signatory,
Luthra Water System Pvt. Ltd.
R/o Trinity Chambers, 2nd Floor,
115-117, Bora Bazar street,
Fort, Mumbai.
- 2) Arug S Luthara,
Age:..... yrs, Occu: Business,
R/o Trinity Chambers, 2nd Floor,
115-117, Bora Bazar street,
Fort, Mumbai.

**... PETITIONERS
ORI.ACCUSED**

VERSUS

- 1] AVR Logistic Pvt. Ltd.,
A company Regd. Under Companies Act,
Having its head office at,
P-157, Behind Jagrut Hanuman Temple,
Bajaj Nagar, Waluj MIDC,
Aurangabad.
- 2] State of Maharashtra.
- 3] Luthra Water System Pvt. Ltd.
A company Regd. Under Companies Act,
Having its head office at
Trinity Chambers, 2nd Floor,
115-117, Bora Bazar street,
Fort, Mumbai.
- 4] Mrs. Mala W/o Umesh Mehta,
Age: Yrs, Occ: Retire,
R/o. C-705, 706, Jupitar Apartment,

4th cross cross, Lokhandwala,
Andheri (West), Mumbai.

... **RESPONDENTS**

...

Mr. Pawan K. Lakhotiya, Advocate for Petitioners.
Mr. Amol S. Gandhi, Advocate for Respondent No.1.
Mr. S. M. Ganachari, APP for Respondent No.2.

...

CORAM : **INDIRA K. JAIN, J.**

DATE : 21st November, 2015.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. Heard finally with
the consent of learned counsel for the parties.

2 Leave to produce copy of roznama.

3 Facts giving rise to the present petition may be stated in
brief as under:

- I. Petitioners are Accused in a complaint filed under
Section 138 of the Negotiable Instruments Act by
Respondent No.1. Complainant is a registered
company and dealing in business of
transportation. Accused No.1 company is
engaged in business of manufacturing sealed

packed water bottles in the name of Natural Spring Water. Accused Nos. 2 to 4 are the directors of Accused No.1.

- ii. According to Complainant, Accused No.1 was in need of transporter. In the month of April 2011 Accused Company approached Complainant and after due negotiations an agreement was reduced to writing. Accused No.1 started placing orders. Complainant company delivered goods and it was acknowledged by consignee on receipt of goods. It is the contention of Complainant that invoice alongwith consignment note was given to Accused. As Accused denied it's receipt Complainant company submitted an application in the complaint under Section 138 of the Negotiable Instruments Act i.e. S.C.C. No.235 of 2012 to lead secondary evidence. The said application came to be allowed vide order dated 9th July, 2015. Hence this petition.

4 Mr. Pawan K. Lakhotiya, learned counsel for Petitioners vehemently contended that on 9th July, 2015 Petitioners and their counsel could not remain present. Since opportunity was denied to them, it is submitted that impugned order be set aside and the matter be remitted back to the Trial Court for fresh consideration.

5 Per contra Mr. Amol S. Gandhi, learned counsel for Respondent No.1 / original Complainant strenuously submitted that no satisfactory reason for absence of Accused Nos.2 and 3 and their counsel is assigned in the application. It is contended that complaint is pending since 2012. It is summary proceeding. It is alleged that with a view to protract the trial in S.C.C. No.235 of 2012 this petition has been filed. Respondent No.1 vehemently submitted that say filed by Accused Nos.2 and 3 was considered by the Trial Court while passing the order and it cannot be said that opportunity was denied. Learned counsel submits that application has no substance and prays to reject the same.

6 It appears from the impugned order that on 9th July, 2015 learned counsel for Accused Nos.2 and 3 did not appear. According to Petitioners due to some unavoidable reason learned counsel for

Accused Nos.2 and 3 could not attend the Court. What was the unavoidable reason is not explained in the petition.

7 Further it can be seen from roznama that application Exhibit 65 was presented on 15th July, 2014. Accused Nos.2 and 3 filed say to said application on 6th September, 2014 whereas other Accused filed their say on 29th April, 2015. Then application Exhibit 65 was fixed for hearing on 22nd May, 2015, 2nd June, 2015, 17th June, 2015 and 9th July, 2015. Roznama shows that on 22nd May, 2015 and 17th June, 2015 Presiding Officer was on leave.

8 The above chronological events would show that for about a year Exhibit 65 was pending.

9 Considering the nature of dispute, say filed by Accused Nos.2 and 3 and averments in application Exhibit 65, it would be in the interest of justice and fair trial to set aside the impugned order by imposing reasonable costs on the Petitioners. Hence the following order –

ORDER

I Criminal Writ Petition No.1025 of 2015 is allowed

subject to costs of Rs.5000/-.

- II. The impugned order below Exhibit 65 passed on 9th July, 2015 in S.C.C. No.235 of 2012 is set aside.
- III. Trial Court to decide application Exhibit 65 afresh within a period of one month from the date of receipt of order, by giving opportunity of hearing to the parties.
- IV. Costs in the Trial Court.
- V. Rule is made absolute in the above terms.

[INDIRA K. JAIN, J.]