IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 36 OF 2015

Shri K. N. Ramchandra Naidu,
s/o late Narayan Swami Naidu &
late Kamala Naidu,
aged 47 years, businessman,
married,
r/o Flat No. T-2, Balaji Mansion,
3rd Floor, Varkhande,
Ponda Goa. … Petitioner

Versus

1. Metro Sales Corporation,
   having business at Shop No. A/2,
   Near Macc Fabrication,
   Azim Apartment, Block A,
   Chand Wadda,
   Fatorda, Margao Goa, 403 662.
   through its proprietor
   Shri Atiqur Rehman,
   s/o Farzur Rehman,
   aged 34 years,
   businessman,
   r/o First Floor, Azim Apartment,
   Block B, Chand Wadda,
   Fatorda, Margao Goa.
   403 662.

2. Mrs. Sujata S. Kondaskar,
   major of age, (age not known),
   R/o G-1, Umar Residency,
   Ilhas, Old Goa. 403110.

3. State of Goa,
   Through Public Prosecutor,
   High Court of Bombay,
   at Panaji Goa. …. Respondents

Mr. G. Agni, Advocate for the petitioner.

Mr. Abhay Nachinolkar, Advocate for respondent no.1.

Ms. Reshma Satardekar, Advocate for respondent no.2.

CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 05.05.2015

JUDGMENT PRONOUNCED ON : 08.05.2015

J U D G M E N T :

Heard Mr. G. Agni, learned counsel appearing for the petitioner, Mr. A. Nachinolkar, learned counsel appearing for respondent no.1 and Ms. R. Satardekar, learned counsel appearing for respondent no.2.

2. The petitioner by the present petition is challenging the order dated 23.02.2015 passed by the Judicial Magistrate First Class, Ponda in Case No. 759/OA/NIA/2011/C by which the learned Judicial Magistrate First Class, has directed the bank manager of Karnataka bank, Ponda to appear as a witness and to produce bank statement of the account pertaining to the business establishment of the petitioner though the same is not the subject matter of the proceedings before the Judicial Magistrate First Class, Ponda. Being aggrieved by the same, the petitioner has filed the present petition on the ground that the petitioner has

nothing to do with the transaction between the respondent nos. 1 and 2 i.e. the original complainant and the accused respectively. According to the petitioner, there was no relevancy with the alleged dishonour of the cheque and the bank account of the petitioner. Therefore, it is contended by the petitioner that the order calling the bank statements of the petitioner are unnecessary and were not required for the purpose of disposal of the Criminal case.

3. Rule. Heard forthwith with the consent of the learned counsel.

4. The learned counsel appearing for the respective respondents waive service.

5. According to Mr. Agni, learned counsel appearing for the petitioner that the petitioner is in no way concerned with the alleged transaction between the respondent nos.1 and 2 nor he had related to the respondent nos. 1 and 2 in any way. During the course of the arguments, Mr. Agni, has submitted that the petitioner is not a party to the litigation. The respondent no.1 has issued a notice to the respondent no.2 after dishonour of the cheque and the notice is addressed to the respondent no.2 on the

name as Mrs. Sujata S. Kondaskar, to which the respondent no.2 has not replied nor taken any specific defence. However, during the cross examination of PW1 in the criminal proceedings, she had taken defence that the cheque was stolen by the present petitioner. Alternatively, the cheque is forged. However, the accused has not stepped into the witness box. However, in order to establish her defence, she submitted an application under the provisions of Section 91 of the Criminal Procedure Code and summoned the bank manager to produce the bank account of the present petitioner. According to Mr. Agni, by calling such witness, the respondent no.2 has abused the process of law in order to get the information which is likely to be produced in the proceedings under the Domestic Violence Act which are filed by the respondent no.2 against the petitioner.

6. As against this, Ms. R. Satardekar, learned counsel appearing for respondent no.2 has argued that the petitioner is the husband of respondent no.2 and this is clear from the record. In order to establish the defence of the respondent no.2, the documents called for are necessary to be placed on record. The learned counsel appearing for respondent no.1 has supported the arguments of the petitioner.

7. I have gone through the reasons recorded by the learned Trial Court while allowing the application at Exhibit 71 in which it has been mentioned as follows :

> "PW1 has been examined before the Court and during his cross examination PW1 has admitted that accused is the wife of one Ramchandra Naidu who is the owner of Shakti Sales and the scrap materials supplied to Shakti Sales Scrapyard".

The copy of the deposition of PW1 is placed on record from which it is seen that the suggestion was put to this witness that the present petitioner is the husband of respondent no.2. However, he has denied the same by saying " *I do not know that the accused is the wife of Ramchandra Naidu. It is not true to suggest that I know the accused is the wife of Ramchandra Naidu but I am deliberately suppressing the same"*. Thus, it is clear from the above evidence that PW1 i.e. respondent no.1 has showed his ignorance about the relationship between the petitioner and respondent no.2. The learned Trial Court has issued the summons to produce the certain documents presuming that the petitioner and respondent no.2 are husband and wife. This is not the proceedings in which certain comments can be made regarding relation between the petitioner and respondent no.2. Rather it is not desirable to determine the status of the petitioner and respondent no.2. For the limited purpose as to whether the documents called for are necessary for disposal of the criminal case or otherwise. It is for the trial Court to come to the conclusion first that the documents called for are necessary or desirable for the purpose of trial. Section 91(1) of the Criminal Procedure Code reads thus :

> "**91**. **Summons to produce document or other thing.-** (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."

8. In view of Section 91 of the Criminal Procedure Code and after satisfaction of the learned Trial Court that the documents are necessary or desirable for the purpose of trial then the Trial Court can issue summons to produce the documents before it.

However, there are no reasons assigned by the Trial Court as to how the documents i.e. bank account details of the petitioner are necessary in the matter of dishonour of the cheque issued by the respondent no.2 in favour of respondent no.1. The reasons are not assigned by the learned Trial Court. Therefore, prima facie, it appears that the bank accounts of the strangers are called for which according to me are not desirable and are not necessary. Hence, the order under challenge needs to be set aside. The petition is allowed and the order passed below Exhibit 71 by the learned Trial Court is hereby set aside. The petition stands disposed of accordingly.

K. L. WADANE, J

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