

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 51 OF 2015

MR. SUSHANT KUSHALI NAIK. ... Petitioner
Versus
MR. PRAVEEN S. BANDEKAR AND ANR., ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner.
Mr. Noel Parras D' Cruz, Advocate for the respondent no.1.
Mr. S. R. Rivankar, Public Prosecutor for the respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 23rd June, 2015

P.C.

By this petition, the petitioner, who is the original accused, is challenging the order dated 31/01/2015, passed by the Judicial Magistrate, First Class, Quepem, in a complaint under Section 138 of Negotiable Instruments Act, 1881 (the Act, for short), filed by the first respondent.

2. According to the petitioner, there was an incident, which had occurred on 10/05/2012, in which, his brother-in-law one Mr. Laxman Naik was kidnapped by the first respondent and his associates and was kept in an isolated place. It is contended that the petitioner was forced to sign a cheque in favour of the respondent, else his brother-in-law would not be released. The petitioner came with a defence that he had not voluntarily passed the cheque in question and it was out of coercion as his brother-in-law was confined.

3. It appears that the petitioner had lodged a complaint of the

incident with Police Station, Quepem on 14/06/2012 and that complaint was enquired into by Police Inspector Santosh Dessai. It was found during the enquiry that the petitioner and his brother-in-law Laxman Naik owed an amount of Rs.6 Lakhs to the first respondent and in that view of the matter, the complaint was found to be false and fabricated. It appears that the concerned Police Inspector Mr. Santosh Dessai had filed a report to that effect dated 21/08/2012 to the Sub-Divisional Police Officer, Quepem. A copy of the said report was produced before the Magistrate. At the instance of the petitioner, P.I. Pravin Gawas was examined as DW1 and during the course of his examination, the report came to be exhibited at exhibit 64. The petitioner, thereafter, moved an application for examining Santosh Dessai, who is the author of the report, for elucidating the material, which had led the Police Inspector to come to a conclusion as recorded in the said report.

4. It is submitted by Shri Bhobe, the learned Counsel for the petitioner that in fact, the Magistrate had earlier permitted the examination of Police witness in pursuance of which DW1 Pravin Gawas was examined. He submitted that the refusal of the Magistrate by the impugned order, to call Santosh Dessai as a witness, is not legal and proper. It is submitted that the learned Magistrate ought to have allowed the examination of the said witness in pursuance of an application under Section 311 of Criminal Procedure Code (Cr.P.C.), filed on behalf of the petitioner.

5. On the contrary, it is submitted by the learned Counsel for the

first respondent that the report is already exhibited. It is submitted that the complaint itself was lodged belatedly on 14/06/2012, when the incident had allegedly occurred on 10/05/2012. It is submitted that in such circumstances, the application filed under Section 311 of the Cr.P.C. by the petitioner, has rightly been rejected.

6. On hearing the learned Counsel for the parties and on perusal of the record and the impugned order, it appears that the report has already been placed on record and is exhibited. The complaint before the Magistrate pertains to an offence of dishonour of cheque under Section 138 of the Act and as such, would have limited issues. It is trite that mere exhibition of a document would not amount to proof. The parties would be at liberty to advance appropriate contentions before the learned Magistrate in respect of the report exhibit 64 which has a bearing on the defence as put forth on behalf of the petitioner. Subject to this, no case for interference is made out.

7. In such circumstances, the Criminal Writ Petition is dismissed. All the rival contentions of the parties on the admissibility or otherwise of exhibit 64 are kept open.

C. V. BHADANG, J.

SMA