

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 55 OF 2015

MR. GIRISH JAGGAL, REPRESENTED BY
ATTORNEY (WIFE) SNEHA GIRISH
JAGGAL AND ANR.,

... Petitioners

Versus

SHREE MALLIKARJUN SHIPPING PVT.
LTD., REPRESENTATIVE MR. BHUSHAN
HONAVARKAR.

... Respondent

Mr. Sebastian Vales, Advocate for the petitioners.

Coram:- C. V. BHADANG, J.

Date:- 18th June, 2015

ORAL ORDER :

Heard the learned Counsel for the petitioners.

2. By this petition, the petitioners, who are the original accused in the complaint under Section 138 of the Negotiable Instruments Act, 1881, are taking exception to the order passed by the learned Magistrate, during the course of recording the evidence of the respondent/ complainant, thereby overruling the objection raised to the exhibition and the admissibility of certain documents, which includes postal acknowledgement.

3. The learned Counsel has placed reliance on the decision of the Hon'ble Supreme Court in ***Bipin Shantilal Panchal Vs. State of Gujrat and another, reported in AIR 2001 SC 1158***, in order to submit that the learned Magistrate, after noting the objections, could have tentatively marked the documents as exhibits, subject to said objections being decided at the stage of final judgment.

4. I have considered the circumstances and the submissions made. The Hon'ble Supreme Court in the case of ***Bipin Panchal*** cited supra, in paragraph 13 of the judgment, held thus :

"13. When so recast, the practice which can be a better substitute is this : Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided "at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course.

(However, we make it-clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

It appears that the learned Magistrate had only taken the documents on record and marked them as exhibits. It is trite that mere exhibition of the documents would not amount to proof and it would be open to the parties to canvass appropriate contentions in respect of the admissibility of the same at the time of final hearing of the complaint case. It may be mentioned that the complaint under Section 138 of the N. I. Act is triable as a summary case and it would not be appropriate to entertain the challenge at the interim stage, particularly when the documents are merely taken on record and marked as exhibits.

4. Subject to above, no interference is called for. In the result, the Criminal Writ Petition is disposed of.

C. V. BHADANG, J.

SMA