

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 95 OF 2015**

Mrs. Sujata Subhash Kondaskar,
wife of K. Ramchandra Naidu,
major of age,
R/o G-1, Umar Residency,
Old Goa.

... Petitioner

V e r s u s

1. Metro Sales Corporation,
having business at Shop No.A/2,
Near Macc Fabrication,
Azim Apartment, Block A, Chand Wadda,
Fatorda, Margao Goa.
Through its Proprietor
Shri Atiqur Rehman
Major of age,
R/o Azim Apartment, 1st Floor, Block B,
Chand Wadda,
Fatorda, Margao Goa.

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

Mr. Austin Fernandes holding for Advocate G. Teles, Advocate for the
Petitioner.

Mr. A. Nachinolkar, Advocate for the Respondent no.1.

CORAM: C. V. BHADANG, J.
DATE: 10TH AUGUST, 2015.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Mr. Nachinolkar, the learned counsel waives service for the respondent no.1.

2. Heard finally by consent of the parties.

3. By this petition, the petitioner/accused is challenging the order dated 11/6/2015 passed by the learned Judicial Magistrate First Class in Criminal Case No.759/OA/NIA/2011/C by which the application for adjournment filed by the petitioner was rejected and the defence evidence is closed.

4. The first respondent has filed a complaint under section 138 of the Negotiable Instruments Act against the petitioner. On 11/6/2015, an application was filed on behalf of the petitioner seeking adjournment for a period of two months on the ground that the counsel for the petitioner was unable to proceed with the matter on account of the fact of her pregnancy. The learned Magistrate found that the case is pending from the year 2011 and there were directions to decide the same within 3 months. The learned Magistrate, therefore, found it impossible to grant the adjournment and while rejecting the same had closed the defence evidence.

5. On hearing the learned counsel for the parties, it appears that in fact two months have elapsed after the impugned order is passed. The learned counsel for the petitioner submits that the counsel is now in a position to proceed with the matter. He is now aggrieved by part of the order by which the defence evidence is closed.

6. The learned counsel for the respondent no.1 in all fairness, submits that appropriate orders in the matter of the closure of defence evidence, be passed subject to the condition that the complaint is directed to be decided within a fixed time.

7. It is apparent that two months time was sought on 11/6/2015 and as such as on today, the said ground does not survive in as much as already two months period has elapsed. The only question is about the part of the order by which the defence evidence is closed. I find that it was on account of personal difficulty of the counsel that time was sought. Indeed the seeking of such time, for a period of two months cannot be said to be justified. Be that as it may, I find that in the interest of justice, indulgence can be granted subject to the petitioner paying costs to the first respondent. In such circumstances, the petition is allowed. The impugned order closing the defence evidence of the petitioner is hereby set aside subject to the payment

of costs of Rs.15,000/- (Rupees fifteen thousand only) to be paid to the respondent no.1 or deposited before the learned Magistrate within a period of one week from today.

8. The deposit payment of costs is a condition precedent to setting aside the order.

9. The learned Magistrate shall proceed to decide the criminal case as expeditiously as possible and preferably within a period of three months from today. The parties to co operate for early disposal.

10. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

Ap/-