

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NOS. 97, 98 AND 99 OF 2015

Shri Govind B. Prabhugaonkar,
Son of B. Prabhugaonkar,
Major in age, Landlord,
R/o H. No. 832/1,
Shelim-Loliem,
Canacona, Goa.

... Petitioner

Versus

1. Mrs. Romaldina Barreto E Carneiro,
Mother under Guardian
of Malaika Carneiro,
C/o Carneiro Caterers,
R/o H. No. 693,
Opp. Fatima Chapel,
Shelim Loliem,
Canacona, Goa.

2. State of Goa,
Through Public Prosecutor,
Panjim-Goa.

... Respondents

Mr. Shailesh Redkar, Advocate for the Petitioner.

Mr. John A. Lobo, Advocate for the Respondent No. 1.

CORAM:- C. V. BHADANG, J.

DATED:- 17th DECEMBER, 2015

JUDGMENT:

Rule. Rule made returnable forthwith. Mr. Lobo,
learned Counsel waives service for the respondent no. 1. Heard
finally, by consent of the parties.

2. All these petitions involve common and connected questions of law and fact. They are between the same parties. As such, they are being disposed of by this common judgment.

3. The petitioner is a complainant in three different cases filed against the respondent no. 1 under Section 138 of the Negotiable Instruments Act, 1881 (the N.I. Act, for short). It is contended that three cheques were issued by the respondent no. 1, towards legally enforceable liability, which were dishonoured on account of insufficient funds, which led the petitioner to proceed against the respondent no. 1, under Section 138 of the N.I. Act.

4. According to the respondent no. 1, he had obtained a hand loan of Rs.25,000/- from the petitioner and had agreed to repay the said amount with interest at the rate of 10% per month. It is contended that by way of security, the respondent no. 1 had handed over five blank cheques, duly signed by him. It is contended that although, the amount was returned alongwith interest of Rs.2,500/-, the petitioner failed to return the cheques.

It is contended that the petitioner got the cheques filled in with three separate amounts, namely, Rs.2,00,000/-, Rs.6,00,000/- and Rs.3,00,000/- and thereafter filed the complaints.

5. Undisputedly, the respondent no. 1 had earlier filed an application, seeking reference of the subject cheques for opinion of the handwriting expert, which was rejected by the learned Magistrate by an order dated 26.11.2014, on the ground that the petitioner/complainant was yet to begin the evidence and as such, the application was premature. Subsequently, after the petitioner led his evidence and the statement of respondent no. 1 was recorded under Section 313 of the Criminal Procedure Code, yet another application came to be filed, for referring the subject cheques for opinion of the handwriting expert. That application has been allowed by the learned Magistrate by order dated 27.04.2015. Feeling aggrieved, the petitioner is before this Court.

6. I have heard Mr. Redkar, learned Counsel appearing for the petitioner and Mr. Lobo, learned Counsel appearing for the respondent no. 1. I have perused the impugned order, as passed.

7. It is submitted by Mr. Redkar, the learned Counsel for the petitioner that two successive applications were not permissible. In this regard, reliance is placed on the decision of the Hon'ble Apex Court, in the case of **G. Someshwar Rao Vs. Samineni Nageshwar Rao and Another**, reported in **(2009) 14 SCC 677**. It is next submitted that Section 138 of the N.I. Act does not require that the cheque should be filled in by the accused. It is thus, submitted that when the signature on the cheque was admitted, the learned Magistrate had no reason or justification, for sending the cheques for the opinion of the handwriting expert. The learned Counsel has placed reliance on the decision of this Court in the case of **Shri Prakash Sevantilal Vora Vs. State of Maharashtra and Another**, **[2011] 0 Cr.L.J. 2207**. It is therefore, submitted that the impugned order be set aside.

8. On the contrary, it is submitted by Mr. Lobo, the learned Counsel for the respondent no. 1 that, the respondent no. 1 had come with a specific defence that the blank cheques were handed

over to the petitioner with the signature of respondent no. 1. It is submitted that the material defence pertains to the amount which is due, as on the date, on which the cheques are shown to be issued. It is submitted that it is the specific case of the respondent no. 1 that he had handed over the cheques to the petitioner, which were only signed, but, were not filled in. In that view of the matter, in order to substantiate the defence, reference of the subject cheques, for the opinion of the handwriting expert is necessary. Reliance is placed on the decision of the Hon'ble Apex Court, in the case of **T. Nagappa Vs. Y.R. Muralidhar, AIR (SC) 2008-0-2010.**

9. I have considered the rival circumstances and the submissions made. Insofar as the two successive applications are concerned, it appears that the first application filed by the respondent no. 1 was not rejected on merits but, it was rejected on the ground that it was premature, in as much as the petitioner/complainant was yet to begin his evidence.

In the case of **G. Someshwar Rao** (supra), the Hon'ble Apex Court has inter-alia held in para 14 that the second

application was intended to delay the disposal of the matter. Not only that, it has been further found that the accused could have examined his own expert and he can still do so and the Court can exercise its jurisdiction if it thinks fit and proper, in terms of Section 73 of the Evidence Act. It can thus be seen, that it was found that the second applications was filed with an intention to delay the disposal of the matter. In the present case, earlier application was found to be premature. In my view, the present case would be clearly distinguishable on facts.

10. In the case of **Shri Prakash Sevantilal Vora** (supra), a perusal of para 17 of the judgment would show that the application was filed at a belated stage, which was rejected by the learned Magistrate. It was found that if it is the defence of the accused that blank cheque was given as a security, whether any authority to fill in the contents of the cheque was given, would have to be decided after evidence is led by both the parties. In the facts of that case, it was found that it was not necessary to send the cheque to the handwriting expert.

11. In the present case in hand, as noticed earlier, the petitioner is coming with a specific case that the cheques were handed over duly signed and he had not filled in the contents, which would include the body of the cheques and the amount which is disputed. In my opinion, the respondent no. 1 has to be given a fair chance to substantiate the defence. In that view of the matter, I do not find that any case for interference under the extra ordinary jurisdiction of this Court is made out.

12. In the result, the Criminal Writ Petitions are hereby dismissed. All the rival contentions of the parties are expressly kept open.

13. Rule is made absolute, in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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