

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 108 OF 2015

Mr. Bonny Fernandes,
Son of Mr. Andrew Cyril Fernandes,
Aged 51 years, married,
resident of Flat 2FF1,
Building no.2,
Prudential Palms,
Chogm Road,
Porvorim, Goa

.....Petitioner.

V/s

1. Mr. Umesh L. Naik,
Son Mr. Ladu Naik,
Major of age, resident of
Laxmi Prasad, Opposite
Chodankar Hospital,
Porvorim, Bardez Goa.
2. Mr. Bradley Fernandes,
Major of age, businessman,
Resident of Block 2/FFI,
Prudential Palms,
Opposite Sapna Garden,
Chogm Road, Porvorim,
Bardez Goa.
3. The Partnership Firm "Expore"
Having Office at Block 2/FF1,
Prudential Palms, Opposite
Sapna Garden, Chogm Road,
Porvorim, Bardez Goa.
4. State,
through the Public Prosecutor,
Panaji Goa.

.....Respondents.

Mr. Aldrin Monteiro, Advocate for the petitioner.
Mr. V. P. Thali, Advocate for the respondent no.1
Mr. S. R. Rivankar, Advocate for the respondent no.4.

Coram:- K. L. WADANE,J.

Reserved on:14th October, 2015.

Pronounced on :15th October,2015.

JUDGMENT

Heard Mr. Aldrin Monteiro, learned Advocate appearing for the petitioner, Mr. V. P. Thali, learned Advocate appearing for the respondent no.1 and Mr. S. R. Rivankar, learned Public Prosecutor appearing for the respondent no.4.

2. Rule made returnable forthwith.

3. Heard by consent of learned counsel appearing for the respective parties. Mr. V. P. Thali, learned Advocate waives notice on behalf of the respondent no.1 and Mr. S. R. Rivankar, learned Public Prosecutor waives notice on behalf of the respondent no.4.

4. This petition is filed by the petitioner under Section 482 of the Cr. P.C. challenging the order dated 4.4.2014 passed by the Judicial Magistrate First Class, Panaji as well as the order passed by the learned Additional Sessions Judge, Panaji in Criminal Revision Application No. 64/2014.

5. Complainant/respondent no.1 herein filed complaint under Section 138 of the Negotiable Instruments Act against accused nos.1, 2 and 3/petitioner and the respondent nos. 2,3 herein.

6. After filing of the complaint, process was issued against the accused persons in pursuance of the process and after service of summons, the accused/petitioner appeared before the learned JMFC, Panaji on 24.5.2011 and on 8.7.2011 plea of the petitioner was recorded and he pleaded not guilty. Thereafter, the evidence of the complainant was over and when the matter was posted for statement of the accused under Section 313 of the Cr.P.C., the accused filed an application to drop him from the proceedings, on the ground that the petitioner is not a partner of the firm of accused no.3 and has not signed the cheque. The learned Magistrate by order dated 4.4.2014 has rejected the application observing that there is no provision to drop the proceedings against the accused. Against that order, the accused no.1 preferred an revision application. The same was dismissed on the same ground.

7. During the course of arguments, Mr. A. Monteiro, learned counsel appearing for the petitioner tried to canvas two aspects that the petitioner is not a partner of the firm of the accused no.3 and he had not signed the cheque. Therefore, criminal proceedings against him are without any basis and therefore he prayed to allow the petition.

8. On the other hand, Mr. V. P. Thali, learned counsel appearing for respondent no.1 by referring to the dates and

events has argued that the petitioner has not challenged the order of issue of process when the petitioner came to know. The moment when the summons were served, the petitioner appeared in the criminal Court.

9. During the course of arguments a specific query was made to the learned counsel appearing for the petitioner as to under which of the provisions present petitioner has filed the application before the trial Court to drop him from the proceedings. However, the learned Advocate was unable to explain the query.

10. To my mind there is no provision in the Cr.P.C. particularly in the matter instituted upon a complaint to drop the accused from the proceedings. Proper course for the petitioner was to challenge the Order of issue of process by way of filing revision application. Instead of availing efficacious remedy he has filed this application before the trial Court at the fag end of the trial.

11. I have gone through the reasons recorded by the learned trial Court as well as by the learned Additional Sessions Judge. Both of them have rightly rejected the application as well as revision application.

12. Hence, there is no substance in the present petition.
Consequently, petition stands dismissed.

13. Rule stands discharged with no order as to costs.

K. L. WADANE, J.

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