

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 114 OF 2014

Mr. Kiran M. Chodankar,
36 years of age,
son of Mohan K. Chodankar,
residing at H.No.130,
Kirpal, Dabal,
Sanguem- Goa .. Petitioner
Versus

1. M/s. Shriran Transports Finance
Co.Ltd., having its Branch office at
Shop No.219/220, Opposite Nehru
Stadium, Lake Plaza, Fatorda,
Margao Goa,
represented herein by its duly
Constituted Attorney Mr. Sameer
G. Kanekar, Major of age,
Son of Mr. Gurudas Kanekar,
employee of M/s Shriram Transport
Finance Co. Ltd.,
2. State
Through Public Prosecutor,
High Court of Bombay at Goa
Altinho, Panjim. .. Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner.

Mr. A. V. Pavitran, Advocate for the respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 27th July, 2015

ORAL JUDGMENT :

Rule. Rule made returnable forthwith.

2. Shri Pavitran, learned Counsel waives service for the respondent no.1.

3. Heard finally with the consent of the parties.

4. By this Writ Petition, the petitioner/ accused is challenging the order dated 12/11/2014, passed by the learned Magistrate, Margao, by which an application under Section 311 of Criminal Procedure Code (Cr.P.C.), filed by the petitioner, was dismissed. That order of dismissal has been confirmed by the Sessions Court.

5. The brief facts are that the first respondent had advanced a vehicle loan to the petitioner. According to the first respondent, the petitioner had passed a cheque towards repayment of the loan amount, which got dishonoured, which led to the filing of the complaint under Section 138 of the N. I. Act against the petitioner. It appears that on behalf of the first respondent, one Sameer Kanekar was examined as PW1 and he was cross-examined on behalf of the petitioner and the cross-examination was completed on 08/02/2012, Thereafter, the statement of the petitioner was recorded under Section 313 of Cr.P.C. and the matter was fixed for defence evidence. It appears

that the petitioner did not enter into the witness box nor examined any defence witness and by order dated 30/04/2012, the defence evidence was closed. The petitioner filed an application purportedly under Section 315 of Cr.P.C. on 18/06/2013, which was rejected. The petitioner had filed Criminal Revision Application No.51/2012 against the same, which was dismissed on 06/12/2013, being not maintainable. It is thereafter that on 27/06/2014 that the petitioner filed an application under Section 311 of Cr.P.C., with a request to call the concerned officer from the RTO along with documents, namely No Dues Certificate dated 05/11/2009 and Form No.35. According to the petitioner, the entire loan amount has been repaid and the first respondent had issued a No Dues Certificate on 05/11/2009 and also had issued Form No.35. Both these documents are directly sent to the RTO for cancellation of the endorsement regarding hypothecation of the vehicle. It is submitted that the fact that the entire loan amount stood liquidated, goes to the root of the matter. In such circumstances, the documents are material to decide the controversy. It is submitted that PW1 has not specifically denied the issuance of No Dues Certificate, when he says that he is not aware of any such document.

6. The learned Magistrate, by an order dated 12/11/2014,

has rejected the application under Section 311 of Cr.P.C., which is the subject matter of challenge in this Writ Petition.

7. I have heard Shri Bhobe, the learned Counsel for the petitioner and Shri Pavitran, the learned Counsel for the first respondent. With the assistance of the learned Counsel for the parties, I have perused the copies of the relevant record produced.

8. It is submitted by Shri Bhobe, the learned Counsel for the petitioner that the fact that the entire loan amount is repaid, is an issue, which goes to the root of the matter. It is submitted that the witness for the first respondent has not specifically denied the issuance of No Dues Certificate and the denial is evasive. The learned Counsel has pointed out from the evidence of PW1 that the first respondent had even opposed the production of a copy of the notice dated 22/03/2010 issued by the first respondent as the same was referred by the learned Counsel for the petitioner, during the cross-examination. It is submitted that the said notice shows that the amount payable is Rs.2,74,963/-, while the settlement amount was Rs.7,10,287/-. The learned Counsel has then referred to another notice dated 07/05/2014, which shows the amount outstanding at Rs.28,47,479/-. It is submitted that the petitioner had issued a reply to this last mentioned notice on

16/05/2014, in which, a specific defence about repayment of the entire loan amount was taken. The learned Counsel has submitted that under Section 311 of Cr.P.C., the Court has powers to call any witness, whose evidence is essential for the just decision of the case.

9. On the contrary, it is submitted by Shri Pavitran, the learned Counsel for the first respondent that the petitioner had not issued a reply to the statutory notice issued by the first respondent, before filing of the complaint. It is submitted that even after the matter was fixed for defence evidence, the petitioner did not enter into the witness box nor examined any defence witness. It is submitted that in such circumstances, the evidence of the petitioner came to be closed on 30/04/2012 and his application under Section 315 of Cr.P.C. was also rejected which the petitioner unsuccessfully challenged before the Revisional Court. It is submitted that now the petitioner cannot be allowed to raise similar pleas and require the examination of the witness under the garb of an application under Section 311 of Cr.P.C. It is submitted that the petitioner is trying to delay the case, which has already reached the stage of final arguments.

10. I have considered the rival circumstances and the

submissions made and I do not find that any case for interference is made out.

11. In this case, according to petitioner, the entire loan amount is repaid and No Dues Certificate was issued on 05/11/2009. It does appear that initially, the defence evidence was closed on 30/04/2012 and thereafter, an application under Section 315 of Cr.P.C. filed by the first respondent was also rejected. Revision filed by the petitioner against that order is also dismissed as not maintainable. In that view of the matter and having regard to the fact that the complaint case has already reached the stage of arguments, I do not find that any case for interference is made out. It is needless to mention that the petitioner shall be entitled to raise any contentions, as may be available to him in law, in the event the judgment in the Criminal Case is adverse to him.

12. With this, the Writ Petition is dismissed. Rule is discharged, with no order as to costs.

C. V. BHADANG, J.

SMA