

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 977 OF 2015

Mrs. Thresiamma George and another

.....Petitioners

V/s.

C. Antony Louis

....Respondent

Mr. Kushal Mor a/w Mr. Prathmesh Kamat for Petitioner
Respondent no. 1 in person
Mr. A. S. Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 8, 2015.

PC :

Heard respective parties.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioners herein are original accused in C.C. No. 3261/SS/2013 pending before Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. Learned Magistrate has issued process against accused for offence punishable under section 409 r/w 34 of Indian Penal Code. Petitioners herein had initially approached this Court seeking relief of quashing of proceedings. However, an order of issuance of process being a revisable order, learned counsel for the

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petitioners have withdrawn the petition with liberty to file a revision application. Liberty as prayed for was granted in the interest of justice. Petitioners had then approached the Court of Additional Sessions Judge, Mumbai by filing revision application no. 34 of 2015. Learned Revisional Court by an order dated 31/01/2015 has been pleased to dismiss revision application. It is a matter of record that petitioners herein had not filed any application under section 245 (2) of Code of Criminal Procedure, 1973.

4) Learned Revisional Court had perused the record and had come to the conclusion that complainant had given specific instructions to the bank not to encash the disputed cheque. Thereafter, complainant filed an application seeking revocation of the instructions of "Stop payment". The said letter was issued on 10/01/2011. The bank had rejected the said application seeking revocation of the directions of "Stop payment" and had requested the complainant to issue fresh cheque. Complainant had not issued any fresh cheque. It is also matter of record that after 10/01/2011, complainant had not given any further instructions to the bank in respect of the disputed cheque. It

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appears from the records that on 05/02/2011, bearer of the cheque had presented the cheque for encashment and it was honoured by the bank.

5) Complainant appearing in person submits that once an application seeking revocation of “Stop payment” was rejected, he was under a bonafide impression that order of “Stop payment” will remain in force. Despite this, the cheque was encashed on 05/02/2011. Complainant had issued notice to the bank, calling upon them to explain as to on what basis the cheque was encashed.

6) Learned counsel for the petitioners submits that he has no instructions as to whether notice was replied or not but as on today, it is the contention of the complainant that the said notice was not replied. He has also made an averment to that effect in the complaint and there is no reason to disbelieve him at this stage.

7) Taking into consideration the facts of the present case, it would be preconceived and prematured to quash the complaint at this stage. Learned Magistrate shall record evidence before charge. After formation of opinion, learned Magistrate shall record the reasons for

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formation of opinion. Learned Magistrate shall not frame charge for only 4 weeks after formation of opinion.

8) With these directions, writ petition stands disposed of. Learned Magistrate shall not be influenced by the observations made herein above and shall form opinion on the basis of evidence which is recorded. Needless to say the ad-interim relief granted earlier stands vacated. All contentions are kept open.

9) Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.