

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1810 OF 2015

Nectar Lifesciences Limited

...Petitioner

Versus

Manav Drugs Pvt. Ltd. & Ors.

...Respondents

.....

Mr. Yashpal Thakur i/b PKA Advocates for the Petitioner.

Mr. Navaneetha Krishnan T for the Respondent Nos. 1
to 5.

Mr. V.B.K. Deshmukh, APP for Respondent No.6-State.

CORAM:-M.L. TAHALIYANI, J.

DATED :10th JUNE, 2015.

P.C.

Admitted. Heard finally.

2. Heard learned counsel Mr. Thakur for the Petitioner, learned counsel Mr. Navaneetha Krishnan T. for Respondent Nos.1 to 5 and learned APP for Respondent No.6-State.

3. The Petitioner is aggrieved by the order passed by the learned Additional Sessions Judge in Criminal Revision Application No.322 of 2015. Said criminal revision application had arisen out of order passed by the Magistrate below Exh.100 in Criminal Case No.92/SS/2011. Said order came to be passed on the application made

by the Petitioner, who is the original complainant in the complaint under section 138 of the Negotiable Instruments Act. The Petitioner was permitted to recall PW1 and was further permitted to re-examine the said witness in respect of certain answers given by the PW1 in cross examination by the learned counsel for Respondent Nos.1 to 5.

4. In this regard it may be noted here that PW1 was examined and cross examined at length and thereafter he was recalled by Respondents for further cross examination. That prayer was granted by the Magistrate. PW1 was further cross examined. It is submitted on behalf of the Petitioner that recording of part of the evidence of PW1 was not correct. It is submitted by learned counsel Mr. Thakur that PW1 could not have made certain admissions which are recorded in his cross examination. It is further submitted that this fact was brought to the notice of learned Magistrate and learned Magistrate was pleased to grant the application for recall of PW1. Earlier also the defects in recording were brought to the notice of the Magistrate, who had recorded the evidence. An application was made before the learned Magistrate for rectifying the typographical mistakes. Learned Magistrate took the view that he would take care of the grievance of the Petitioner at the time of final arguments. However, since there was

change of Magistrate an application was made under section 311 by the Petitioner for recall of PW1 so that few questions could be asked to him with respect to alleged typographical mistakes. Said application as stated earlier, has been allowed. Learned Additional Sessions Judge has set aside the order of Magistrate.

5. Learned counsel Mr. Thakur has submitted that learned Additional Sessions Judge could not have entertained the revision application as order impugned before the Magistrate was an interlocutory order. It was further submitted that the only way available to the complainant to bring true facts before the Court was to recall PW1 and that therefore, the order of the Magistrate was in accordance with law.

6. Learned counsel Mr. Navaneetha Krishnan for Respondent Nos.1 to 5 submitted that this cannot be permitted to be done in as much as there is no proof that, it was a typographical mistake. It is submitted that certain admissions have come in the cross examination of the respondents and that respondents are entitled to take benefit of the admissions made by the PW1. It is contended by him that Petitioner /complainant is trying to demolish the defence developed by the Respondents.

7. I have gone through the part of the evidence where the typographical mistakes are alleged to be committed. After having gone through that part of the evidence, I am sure that PW1 could not have given such admissions particularly because the admissions were 100% contrary to the complaint itself. There is definitely something wrong in recording evidence which needs to be rectified. Method adopted by the complainant for rectifying the mistakes and permitted by the Magistrate, in my opinion, is not wrong. I do not find anything wrong in the order of the Magistrate. Learned Additional Sessions Judge should not have entertained the revision application because the order in question was interlocutory order and secondly, on merit also the case was made out for recall of PW1. In this regard it may be mentioned here that after recall of PW1 and after his further cross examination for the limited purpose Respondents will also get opportunity to cross examine the witness. Hence, the following order is being passed :

a) Order passed by the learned Additional Sessions Judge in Criminal Revision Application No.322 of 2015 is set aside.

b) Order passed by the Magistrate allowing the Petitioner

to call PW1 is maintained.

c) PW1 shall be allowed to be examined by the Petitioner to the limited extent to get clarification from PW1 with regard to the impugned part of the notes of evidence.

d) Petition is accordingly disposed of. Learned counsel for the Respondent prays for stay of the order. I do not find any merit in the prayer. Prayer is rejected.

(JUDGE)