

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 52 OF 2016

Mr. Dhananjay Mahadev Dessai,
S/O Mr. Mahadev Dessai,
aged 35 years, Business,
r/o Nagarcem Palolem,
Canacona-Goa.

..... Petitioner

V e r s u s

The Canacona Urban Co-operative
Credit Society Limited, having its
Head office at Canacona,
Represented by its Power of Attorney
holder, Mr. Vasant Devidas,
R/O H. No. 21, Mudkud, Agonda.

..... Respondent

Mr. Amey J. S. Kakodkar, Advocate for the Petitioner.

Mr. P. A. Kamat, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
DATE: 8TH JUNE, 2016.

ORAL JUDGMENT:

Rule. Rule heard finally by consent of the parties.

2. The petitioner, who is facing prosecution under section 138 of the Negotiable Instruments Act (Act for short) is challenging the order dated 27/1/2016 passed by the learned Judicial Magistrate First Class, Canacona in

Cr. Case No.10/NI/2014, by which the learned Magistrate has rejected an application under section 311 of Cr.P.C seeking recall of PW.1 and PW.2.

3. It is contended by the learned counsel for the petitioner that although earlier PW.1, Shri Vasant Devidas, who was the Branch Manager of the respondent/complainant and PW.2, Mr. Amar Gaonkar, who is the Chairman of the respondent were cross examined by the earlier counsel appearing for the petitioner, there are some aspects left out which are necessary for substantiating the defence put forth by the petitioner. It is submitted that under section 311 of Cr.P.C. the Court can direct examination and/or recall of any witness if the examination/re-examination of such witness is necessary for the just decision of the case. The learned counsel has pointed out that it is the specific defence of the petitioner that the loan amount was never credited in his account or paid to him but was paid to the mother of one of the sureties. It is submitted that this aspect has not been properly put and brought out in the cross examination. The learned counsel submits that it is not always possible for an accused to set out and disclose the defence in details while seeking such recall as it may put the witness to notice about such defence which may have a bearing on the nature of the cross examination.

4. The learned counsel for the respondent has supported the

impugned order. It is submitted that the application filed by the petitioner under section 311 Cr.P.C is lacking in material particulars as to the aspects on which the witnesses remained to be cross examined, requiring their recall.

5. I have considered the rival circumstances and the submissions made. The learned counsel for the petitioner, on instructions, states that he is restricting his prayer for recall in so far as PW.2, Amar Goankar is concerned, who is the chairman of the respondent/society. It is true that the application Exhibit D-49 filed by the petitioner under section 311 of Cr.P.C. does not set out the nature of “some vital questions, which remained to be asked”. However, that may not be always decisive of the matter, if the Court otherwise finds that the recall/reexamination is necessary for the just decision of the case.

6. With the assistance of the learned counsel for the parties, I have gone through the evidence and the cross examination of PW.2 and I find that for just decision of the case, it would be necessary to direct recall of PW.2 alone. No prejudice whatsoever is likely to be caused to the respondent by such recall. In such circumstances, the petition is partly allowed. The impugned order dated 27/1/2016 to the extent refusing to recall PW.2 is hereby set aside. The learned Magistrate shall recall PW.2, Mr. Amar Gaonkar for further cross-examination. The learned counsel for the petitioner

undertakes that he will ensure that the witness is cross examined on the next date i.e. 1/7/2016. The learned counsel also undertakes that the cross examination shall be restricted to the aspects left out only.

C. V. BHADANG, J.

ap/-