

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 79 OF 2016

SHRI. SUBASH SHARMA.

... Petitioner

Versus

SHRI. SITARAM KARAPURKAR.

... Respondent

Shri Anthony Joe D'silva, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 18th June, 2016

ORAL ORDER :

Heard learned Counsel for the petitioner.

2. The petitioner is accused in a complaint under Section 138 of the Negotiable Instruments Act. The defence of the petitioner, inter alia, is that the account on which the subject cheque was issued was already closed in the year 2010 and, as such, the case set up by the respondent/complainant that the cheques were issued in the year 2013 cannot be accepted.

3. The learned Magistrate has convicted the petitioner by judgment and order dated 30/10/2015 which is subject matter of challenge before the learned Sessions Judge in Criminal Appeal No.194/2015.

4. In the appeal, the petitioner by an earlier application sought to rely on a document in the form of a letter from the United Bank of

India in order to show that the account was already closed on 29/05/2010. That application was dismissed on 25/02/2016 on the ground that the said communication has no relevance to the controversy involved. The Court also found that there was nothing on record as to when the document came into existence. Be that as it may, the petitioner filed a second application Exhibit D11 purportedly under Section 391 of Criminal Procedure Code on 17/02/2016 seeking to place reliance on a communication from the United Bank of India. This was dismissed by the learned Sessions Judge by the impugned order on the ground that the earlier application seeking to place reliance on the said undated letter issued by the United Bank of India was rejected. It was found that the application Exhibit D11 was on the same ground. The learned Sessions Judge has also noticed that the petitioner had examined the concerned Officer from the United Bank of India as DW1 who is the author of the said letter and who has categorically deposed that the account of the petitioner was closed on 29/05/2010. The learned Sessions Judge has also noticed that this fact is not disputed by the respondent/complainant in the cross-examination. In such circumstances, the application came to be rejected which order is subject matter of challenge in this petition.

5. The learned Counsel for the petitioner points out that the document now sought to be produced is a certificate dated 10/03/2016 issued by the United Bank of India, stating that the

account stands closed on 29/05/2010. It is submitted that this is not the same letter which was sought to be relied on the earlier occasion.

6. I have considered the circumstances and the submissions made. It may be seen that the petitioner has already examined the concerned officer of the Bank, who has stated that the account is already closed. Thus, the evidence about the closure of the account which is part of the defence of the petitioner has already come on record which is one of the reasons given by the learned Sessions Judge for rejection of the application. It may further be seen that this application came to be filed at the appellate stage. In any case, under Section 391 of the Criminal Procedure Code unless and until the Appellate Court thinks that the additional evidence is necessary such production cannot be allowed.

7. In my considered view, once the learned Sessions Judge on the basis of the facts and circumstances as also the evidence on record has taken a view that the production is not necessary no interference is called for in the exercise of the supervisory jurisdiction of this Court. I thus decline to entertain the petition. The Criminal Writ Petition is accordingly rejected.

C. V. BHADANG, J.

NH