

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1269 OF 2016

Carcenet Infra Projects Pvt. Ltd. & anr. ... Petitioners.

Versus

The State of Maharashtra & anr. ... Respondents.

Mr. Pandit Kasar, advocate for petitioner.

Ms. A.A. Mane, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : JUNE 21, 2016

P.C.:

1 Heard the learned Counsel for the Petitioners and the learned Counsel for the respondent. Perused the papers.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The petitioners herein happen to be accused in Criminal Case NO. 20596 of 2014 pending before the Judicial Magistrate First Class

at Pune. The Petitioners are being prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act. The statement of the Petitioner under Section 313 of the Code of Criminal Procedure, 1973 was recorded 29th March, 2015. In answer to Question No. 14, the Petitioners had deposed that a false case is filed against him by the complainant. The Petitioners herein filed application under Section 311 of the Code of Criminal Procedure, 1973 on 6/1/2016 before the learned Magistrate. It was specifically contended that the disputed cheques were not issued in favour of the complainant in discharge of legal debt or liability, but the complainant had used the said cheques for his personal benefits taking advantage of the possession and custody of the said cheques.

4 In paragraph-2 of the application, it was submitted as follows :

"The previous Advocate who was engaged by the Accused has not thoroughly cross-examined the Complainant on many points of fact and law and which is required to be brought on record from the mouth of the Complainant for proper adjudication of the matter and to meet the ends of justice."

It was further contended that if the accused are not given the opportunity to prove innocence in the matter and if the label of conviction is affixed on accused because of the want of evidence of acquittal by discharging the burden by the accused, then the accused will put to a great loss and injury. The application was filed for recalling the complainant. The prayer was as follows :

“(b) The complainant be recalled for further cross-examination for the accused and the accused be also permitted to lead the defence evidence, "if any".”

The said application was rejected by the learned Magistrate on 3/2/2016. The learned Magistrate had taken into consideration that the advocate was changed. That it was the specific contention of the accused that an error was committed by the advocate and that he has not thoroughly cross-examined the complainant on 17th March, 2015. It was apparent that the accused was indulging into delaying the trial and protracting the proceedings. An oral submission was made that an opportunity be given to the accused to enter into a compromise

and hence, the learned Magistrate had arrived at a right conclusion that the accused was protracting the proceedings.

5 Being aggrieved by the order dated 3/2/2016 the Petitioner has filed the present petition. It is contended by learned counsel for the petitioner that after recording of the statement under section 313 of the Code of Criminal Procedure, parties have entered into compromise by way of memorandum of understanding on 26/11/2015. The purported copy is annexed to the petition. It appears that the said memorandum of understanding is neither a notarised copy nor it was executed before any authority. There are signatures of the accused, advocate for the accused, advocate for complainant and complainant. Genuineness of the said document is also doubtful.

6 This Court cannot be oblivious of the fact that although the Petitioner and his newly appointed advocate were fully aware that the memorandum of understanding is executed on 26/11/2015, there was no reason whatsoever to conceal the said fact before the learned

Magistrate. There was no averment in the application dated 6/1/2016 that the parties have entered into a memorandum of understanding. The reasons assigned for recalling the complainant for cross-examination was as follows :

“it is just and necessary to recall the complainant for cross-examination and accordingly the opportunity is required to be given to the Accused in the interest of justice. If the complainant is recalled for cross-examination, no irreparable loss or injury is likely to be caused to the Complainant. It is respectfully submitted that the Courts are established to make justice with the litigants and therefore, the opportunity or proving the innocence to the Accused is required to be given in the interest of justice.”

The contention was to remind the court that the courts are meant for imparting justice although there appears to be suppression of facts and fraud being played on court without assigning any reason for recalling the complainant. In such circumstances, the order passed by the learned Judicial Magistrate First Class cannot be interfered. The learned Magistrate has assigned justifiable reasons for rejecting the

said application. The contention that the parties have entered into a memorandum of understanding has been raised for the first time before this Court. It is tried to show to this Court that after recording of the statement under section 313 of the Cr. P.C., the parties have settled the matter amicably. That since genuineness of the very document is suspected, the contention cannot be taken into consideration. Hence, the Petition being sans merits deserves to be rejected.

7 The learned Magistrate seized with the CC No. 20596 of 2014 shall proceed with the matter forthwith. Roznama is not placed on record and therefore, it is not known as to why the Judgment in the present case was not delivered although the statement under section 313 of the Code of Criminal Procedure, 1973 has been recorded more than one year ago.

8 The petition stands dismissed. Rule is discharged. The Writ Petition is disposed of accordingly.

Office to communicate this order to the concerned court.

(SMT. SADHANA S. JADHAV,J)