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WP-4002-2015
(sr. no.902/suppl.board)
Thursday,3.3.2016

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4002 OF 2015

IN

CRIMINAL REVISION APPLICATION NO. 182 OF 2015

IN

BELOW EXHIBIT- 44

IN

SUMMARY TRIAL CASE (STC) NO. 195 OF 2013

Mukesh Sohan Saini

.....Petitioner

V/s.

1. Mahendra Bhagwant Dhabale & Ors.

.....Respondents

* * * * *

Mr. Ashok Tajane, Advocate for the petitioner.

Mr. S.V. Abhang a/w. Mr. Aashish Satpute i/by. Len Credence, Advocate
for respondent no.1.

Ms. A. Malhotra, APP for State.

Coram :- Smt. R.P. SondurBaldota, J.

3rd March, 2016.

P.C. :-

1). The petition herein is by the accused in the proceedings filed by respondent no.1 under Section 138 of the Negotiable Instruments Act in respect of cheque in the sum of Rs.11,85,000/-. He had, on 30th March, 2015 filed the application at Exhibit-44 for permission to cross-examine respondent no.1. At that time, the matter was pending for final arguments on the complaint. The trial Court, by the detailed order passed on the very day, dismissed the application. The petitioner,

challenged the order by way of revision application before the Sessions Court. By its order dated 20th August, 2015 the Sessions Court dismissed the Revision Application confirming the order of the trial Court. Aggrieved by the two orders, the petitioner has approached this Court.

2). The petition is opposed by respondent no.1 by filing affidavit/reply. Mr. Abhang, the learned Advocate appearing for respondent no.1, has vehemently opposed the petition.

3). The facts constituting the background of the petition are not disputed. The cheque in question was issued by the petitioner to respondent no.1 towards the arrears of salary payable to him. When that cheque was not honoured, respondent no.1 after service of statutory notice, filed proceedings under Section 138 of the Negotiable Instruments Act against him. The affidavit of examination-in-chief of respondent no.1 was filed on 10th December, 2013 after which the petitioner absconded. His presence had to be secured by issuing non-bailable warrant against him. The petitioner received copy of affidavit of examination-in-chief on 26th February, 2014. Despite several opportunities given, he failed to cross-examine respondent no.1. Finally, on 5th November, 2014 the trial Court passed "No Cross" order against him. On the next date i.e. 13th November, 2014 he filed application at Exhibit-37 for setting aside the order of "No Cross". The application was opposed by respondent no.1 contending that the petitioner was employing delaying tactics. The trial Court, while finding substance in the argument on behalf of respondent no.1 and while noting that the petitioner had in his application, nowhere stated the reason for not conducting the cross-examination, allowed the application by its order dated 12th January, 2015 solely by way of concession to the petitioner

with a warning that no adjournment would be granted to him on the next occasion and that he had to proceed with the cross-examination without fail. Despite the warning, the petitioner on the next date i.e. on 18th February, 2015 filed application for adjournment on the ground that compromise talks were going on between him and respondent no.1. The application was opposed and the trial Court by its order passed on the same date rejected the application and directed the petitioner to proceed with the cross-examination forthwith. The petitioner, however, failed to appear in the Court and cross-examine respondent no.1. The trial Court then passed the second order of “No Cross” with observation that the petitioner is not interested in cross-examining respondent no.1 and was merely delaying the trial. Thereafter, on 9th March, 2015 the statement of the petitioner under Section 313 Criminal Procedure Code was recorded. At that time also, the petitioner was not inclined to cross-examine respondent no.1 or enter into the witness box. Then on 23rd March, 2015 he had filed the application at Exhibit-43 to examine his witnesses. That application was allowed on the very day and opportunity given to the petitioner. The advocate for the petitioner appeared in the Court but did not examine any witness. On the same day, at about 4.15 p.m., he filed the application at Exhibit-44 seeking permission to cross-examine respondent no.1. By the order dated 30th March, 2015, the trial Court recorded the conduct of the petitioner and dismissed his application and kept the complaint for final arguments. On the next two dates i.e. 2nd April, 2015 and 9th April, 2015 the arguments on behalf of respondent no.1 were concluded and the petitioner was to advance arguments on 15th April, 2015. However, on that day, the petitioner filed Revision Application in the Sessions Court to challenge the order on Exhibit-44 and sought adjournment on that ground before the trial

Court. The adjournment for the purpose was refused and the matter was kept for judgment on 21st April, 2015. The Sessions Court dismissed the revision on 20th August, 2015. Thereafter, the present petition was filed on 2nd October, 2015.

4). The petitioner baldly claims in the petition that, he could not proceed with the cross-examination “due to lack of proper advise and due to intention to settle the matter”. According to him, the matter could not be settled due to the reasons and circumstances beyond his control.

5). Mr. Tajane, the learned Advocate appearing for the petitioner submits that, the principles of natural justice require that the petitioner be given due opportunity to cross-examine respondent no.1.

6). Mr. Abhang, on the other hand submits that, the petitioner does not deserve any concession. He also submits that the limited supervisory jurisdiction of this Court does not call for any interference with the impugned orders. He relies upon the following observations of Division Bench of Orissa High Court on the scope of interference, in **Indrajeet Roy v. Republic of India reported in 1999 Cri. L.J. page 4727.**

“ It is, no doubt, true that the provision contained in Section 311 Cr.P.C. Is to be liberally considered to advance the cause of substantial justice. However, the question as to whether a witness should be recalled or not is essentially within the discretion of the trial Court and unless it is shown that such discretion has been exercised illegally, a revisional Court will be slow to interfere with the discretion of the trial Court and the scope of interference in such matter is very limited and what applies to revisional Court in such matters is applicable with much rigour to the High Court while exercising supervisory jurisdiction under Article 227 of the Constitution. As observed in the decision reported in AIR 1979 SC 381 : (1979 Cri. L.J. 318) (Jagir Singh v. Ranbir

Singh), unless illegality or miscarriage of justice is shown, interference under Article 227 of the Constitution is not called for.”

7). The mischievous conduct of the petitioner is writ large on the record of the case. By sheer abuse of process of law, he has dragged on the proceedings for more than two years. Every application made by him, is seen to be frivolous and does not even set out any reason for not proceeding with the cross-examination. Hence, the petition is dismissed with costs. The petitioner shall pay costs quantified at Rs.1,00,000/- to respondent no.1 within 8 weeks. In the event of failure to pay costs, respondent no.1 is at liberty to recover the same as arrears of land revenue.

(SMT. R.P. SONDURBALDOTA, J)