

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NOS. 29, 30, 31
AND 32 OF 2017

CRIMINAL WRIT PETITION NO. 29/2017

MRS. LALITHA C., ... Petitioner

Versus

SIDDESH R. NAIK AND ANR., ... Respondents

CRIMINAL WRIT PETITION NO. 30/2017

MRS. LALITHA C., ... Petitioner

Versus

SIDDESH R. NAIK AND ANR., ... Respondents

CRIMINAL WRIT PETITION NO. 31/2017

MRS. LALITHA C., ... Petitioner

Versus

ZUARI SHIPYARD PVT. LTD., REP. BY
ITS DIRECTOR, MR. SIDDESH R. NAIK
AND ANR., ... Respondents

CRIMINAL WRIT PETITION NO. 32/2017

MRS. LALITHA C., ... Petitioner

Versus

M/S. SIDDESH ORE CARRIERS PVT.
LTD., REP. BY ITS DIRECTOR, MR.
SIDDESH R. NAIK AND ANR., ... Respondents

Shri Ganesh Naik, Advocate for the Petitioner.

Shri Adish Vinod Halarnkar, Advocate for Respondent No.1.

CORAM:- C. V. BHADANG, J.

DATE:- 1st MARCH, 2017

ORAL ORDER:

All these petitions are between the same parties and involve a common question and as such, they are being disposed of by this common order.

2. The petitioner is an accused in four different complaints filed by the respondent no.1, under Section 138 of the Negotiable Instruments Act, 1881 (Act, for short). The complaints are filed in the year 2015. On 28.06.2016, the complainant (PW-1), filed his affidavit in evidence on which date, the petitioner was absent and had sought exemption, which was granted. The case was fixed on 16.07.2016, when a non-bailable warrant was issued, as the petitioner was absent, which was made returnable on 12.08.2016, on which date, the petitioner remained present and sought cancellation of non-bailable warrant, which was granted. On the very next date i.e. on 16.09.2016, the petitioner again remained absent and sought exemption, which was granted. On the next date i.e.

01.10.2016, the petitioner again remained absent and sought extension of time to cross examine PW-1. The learned Magistrate dismissed the said application, and the matter was fixed on 12.10.2016, on which date, the petitioner filed an application under Section 311 of the Criminal Procedure Code, 1973 (Cr.P.C., for short), for recall of PW-1. The matter was adjourned for say of the respondent no.1 on the aforesaid application on 03.11.2016. On that day, the petitioner was again absent and had sought exemption. On the next date i.e. 11.11.2016 again, the petitioner was absent. Similarly, on 18.11.2016, the petitioner remained absent. On the next date i.e. on 06.12.2016, the petitioner was absent and the learned Magistrate dismissed the application for recall of PW-1 and the matter was fixed on 22.12.2016. On that date, the petitioner filed another application under Section 311 of Cr.P.C., which has been dismissed on the same day. Incidentally, the petitioner has not challenged the order dated 22.12.2016.

3. Be that as it may, the facts as set out above would clearly show that the petitioner was not diligent in defending the complaint.

4. The learned Counsel for the petitioner submits that the affidavit in evidence was filed on 28.06.2016 and the impugned order is passed on 06.12.2016. It is submitted that there was delay on the part of the respondent itself in filing the affidavit.

5. On the contrary, the learned Counsel for the respondent no.1 has submitted with reference to the order sheet that, right from the institution of the proceedings, earlier also, there are several instances when the petitioner has remained absent on account of which, substance of accusation could not be explained to the petitioner and that is the reason as to why, the affidavit in evidence could not be filed earlier.

6. It may not be out of place to mention that the substance of accusation was explained on 10.06.2016 and the affidavit is filed by the respondent no.1 on the very next date of hearing i.e. 28.06.2016 and as such, no delay could be attributed to the respondent no.1 in prosecuting the complaint. The learned Counsel for the respondent no.1 has pointed out from the roznama that the petitioner remained absent for about

10 occasions and twice non-bailable warrant was issued against the petitioner.

7. The Hon'ble Apex Court in the case of **Indian Bank Association & Others Vs. Union of India & Others, (2014) 5 SCC 590**, has laid down guidelines to be followed while dealing with cases under Section 138 of the Act, in para 21 of the judgment. Clause 5 of para 21 would show that the Court has to ensure that examination in chief, cross examination and re-examination of the complainant must be conducted within three months from the assigning of the case.

8. On behalf of the petitioner, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Rajaram Prasad Yadav Vs. State of Bihar & Another, (2013) 14 SCC 461**, which was a case arising out of prosecution under Sections 324, 307 read with Section 34 of IPC and the question was about recall and re-examination of the complainant after he had turned hostile. It can thus be seen that the case turned on its own facts.

Undoubtedly, the Court has a wide discretion under Section 311 of Cr.P.C., which is to be exercised judiciously (see

para 17.6 of the judgment in the case of **Rajaram Prasad Yadav** (supra)).

9. Normally, this Court would lean in favour of the accused being granted permission to cross examine the witness and the matter being decided on merits than on technicality. However, this would again depend on facts and circumstances of each case. The facts as stated herein above are sufficient to hold that the petitioner is not entitled to any such indulgence.

The petitions are without any merits and are accordingly dismissed.

C. V. BHADANG, J.

EV