

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 3 OF 2016**

M/S.V.B.NAIK AND SONS, REP. BY ITS
PARTNER MR.VALLABH VINAYAK NAIK. ... Petitioner

Versus

SHRI RAMA NARAYAN FADTE AND ANR., ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner.

Ms. N. Shirodkar, Advocate for the respondent no.1.

Coram:- F. M. REIS, J.

Date:- 3rd August, 2017

ORAL ORDER :

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioner and Ms. N. Shirodkar, learned counsel appearing for the respondent no.1.

2. The challenge in the above petition is to the order passed on Exhibit 52 dated 20.10.2015 whereby an application

under Section 91 of the Criminal Procedure Code came to be allowed.

3. Briefly, it is the case of the petitioner that the proceedings under Section 138 of the Negotiable Instruments Act came to be filed against the respondent no.1 in view of the dishonour of cheque for the amount which is legally due to the petitioner. The respondent no.1 has disputed that any such cheque was given or that the respondent is liable to pay any amount to the petitioner. After evidence was recorded, the statement under Section 313 of the Criminal Procedure Code was recorded. The respondent no.1 filed an application under Section 91 of the Criminal Procedure Code to direct the petitioner to produce two documents namely the original bill book and the balance sheet for the relevant financial year when the subject cheque was issued. The petitioner opposed such application inter alia contending that the xerox copies of the relevant bill book were already placed on record and that the question of producing the personal balance sheet of the petitioner would not at all be

justified. The learned Judge by the impugned order has allowed the application and directed the petitioner to produce the original bill book as well as the balance sheet.

4. Mr. A. D. Bhobe, learned counsel appearing for the petitioner pointed out that before exercising jurisdiction under Section 91 of the Criminal Procedure Code, it was incumbent upon the Magistrate to first come to the conclusion that such documents are desirable for the purpose of investigation or trial. It is further pointed out that on plain reading of the impugned order, this aspect has not at all be considered. The learned counsel further submitted that as far as the bill book is concerned, as the xerox copies are already on record, the petitioner are prepared to produce the original bill book for the purpose of perusal of the learned Magistrate. But however, as far as the balance sheet is concerned, it is the contention of the learned counsel that such documents being a personal document of the petitioner and considering the stand taken by the respondent no.1/accused in the cross examination, there is no case made out

for production of such documents. The learned counsel further submitted that this exercise on the part of the respondent no.1 is only a fishing and roving inquiry which cannot be granted by invoking the provisions of Section 91 of the Criminal Procedure Code. The learned counsel further submitted that the respondent no.1 has not called upon the petitioner to produce such documents during the course of his cross examination and as such, the question of the respondent no.1 directing the petitioner to produce such documents by invoking the provisions of Section 91 of the Criminal Procedure Code would not at all be justified. The learned counsel thereafter has taken me through the impugned order passed by the learned Magistrate to point out that there is no finding therein to show that the production of the documents was desirable for the purpose of holding an inquiry and trial in the subject proceedings. The learned counsel as such submits that the impugned order be quashed and set aside.

5. On the other hand, Ms. N. Shirodkar, learned counsel appearing for the respondent no.1 has supported the impugned

order. The learned counsel has taken me through para 6 of the impugned order to point out that the learned Judge has categorically held that both the said documents would be relevant for deciding the matter. The learned counsel further submitted that the learned Magistrate has wide powers in terms of Section 91 of the Criminal Procedure Code to direct the parties to produce documents which are desirable to decide the matter in controversy. In support of her submissions, the learned counsel has relied upon the judgment of the Apex Court reported in ***(2000)5 SCC 679*** in the case of ***Om Parkash Sharma V/s CBI, Delhi***, placing emphasis to para 6 therein. The learned counsel further pointed out that taking note of the observations of the Apex Court, there is no case made out by the petitioner for interference in the impugned order. The learned counsel further submitted that the documents would establish the stand taken by the respondent no.1 that there is no legally enforceable debt payable by the respondent no.1 to the petitioner. The learned counsel appearing for the respondent no.1 states that the balance sheet is required only to ascertain whether the alleged claim of

the petitioner of the subject amount is reflected therein or not. The learned counsel as such points out that the petition be accordingly rejected.

6. Mr. A. D. Bhobe, learned counsel appearing for the petitioner in reply to the contention of the learned counsel appearing for the respondent no.1, has pointed out that the said judgment of the Apex Court in the case of ***Om Parkash Sharma*** (supra) has thereafter been explained by the Apex Court in the judgment reported in ***(2005)1 SCC 568*** in the case ***State of Orissa V/s Debendra Nath Padhi***.

7. I have considered the submissions of the learned counsel and I have also gone through the records. The learned Judge while passing the impugned order has taken a view that the two documents namely the original bill book and the balance sheet are relevant for the purpose of the inquiry and trial in progress. Section 91(1) of the Criminal Procedure Code reads thus :

"91. Summons to produce document or other thing.-

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.”

8. On plain reading of the said provisions, it clearly provides that any documents which the learned Magistrate found to be desirable or necessary for an inquiry, trial or other proceedings be directed to be produced. In the present case, the learned Magistrate has noted that such documents are of the petitioner themselves. On perusal of the cross examination of the complainant, there is a suggestion to the effect that the balance

sheet do not disclose the claim put forward by the petitioner based on the subject cheque. To verify the correctness or otherwise of such complaint and considering the stand taken by the respondent no.1, it cannot be said that such documents are not necessary for deciding the matter in controversy. Mr. Bhobe, learned counsel appearing for the petitioner fairly accepts that the original bill book would be produced but however the only objection raised with regard to the balance sheet as according to him, it would include the personal information. The balance sheet is produced in terms of Section 91 of the Criminal Procedure Code only to verify the correctness of the allegations made by the parties whether the subject transaction is disclosed in the balance sheet as pointed out by the learned counsel for the respondents. As such, the apprehension of the petitioner that the personal accounts of the petitioner would be disclosed cannot be accepted. Considering that such balance sheet is of the petitioner themselves who are the complainant, I am of the opinion that there is no jurisdictional error committed by the learned Magistrate which would call for interference by this Court in the

present petition. There is no failure of justice to the petitioner as such the documents are of the petitioner themselves and the learned Magistrate has directed the production of such documents only for the purpose of verifying the respective stands of the parties based on the material on record.

9. Subject to the above, I find that there is no case made out for interference in the impugned order. The petition stands accordingly rejected.

F. M. REIS, J.

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