IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 70 OF 2017

SHRI. VIJAYKUMAR FADKE., ... Petitioner

Versus

M/S. COUNTO AUTOMOBILES PVT. LTD.,
REP. BY AUT. OFFICER, MR. BALABHIM
VINAYAK UPADHYE., ... Respondent

Mr. Ulhas Tari, Advocate for the petitioner.

Mr. S. Karpe, Advocate for the respondent.

Coram:- M. S. SONAK, J.

Date:- 19th April, 2017

P.C.

Heard Mr. Tari for the petitioner and Mr. Karpe for the respondent.

2. Mr. Tari, the learned Counsel for the petitioner submits that there are discrepancies in the complaint and in such a situation, the process ought not to have been issued. He points out that in paragraph 3 of the complaint, it is stated that the cost of the vehicle exclusive of Road Tax and Insurance, is stated to be Rs.8,03,291/-. He further points out that in the said paragraph, it has been stated that the complainant had offered a discount of Rs.25,000/- to the accused. He submits that upon a conjoint reading of these two statements, the price of the motor vehicle works out to Rs.7,78,291/-. However, in the very same

paragraph, surprisingly, it is stated that the price of the vehicle works out to Rs.8,51,657/-. He points out that though the said price is stated inclusive of Road Tax and Insurance, there is no averment in the complaint that the amounts towards Road Tax and Insurance have been borne by the complainant. He points out that it is the accused, who has in fact paid these amounts.

3. Mr. Tari further submits that in paragraph 5, it is admitted that a Demand Draft of Rs.7,50,000/- was issued to the complainant in respect of purchase of the vehicles. Mr. Tari submits that without prejudice to the contention of the petitioner, the petitioner is agreeable to pay an amount of Rs.25,291/-. He, however, submits that the cheques, in an amount of Rs.1,01,657/-, are not at all due and payable and even prima facie, there is no consideration demonstrated in respect of the cheque amount. For all these reasons, Mr. Tari submits that the issuance of process, is liable to be quashed in the exercise of extraordinary jurisdiction of this Court.

4. Mr. Karpe, the learned Counsel for the respondent points out that at the stage of issuance of process, the accused is neither entitled to be heard nor can any contentions based upon the defence, be entertained. He submits that the Road Tax and Insurance amounts have been paid by the complainant. He submits that this is precisely for these reasons that the cheques

came to be issued. He submits that there are certain presumptions, which arise at the issuance of cheque and in case the same have to be rebutted, this is for the accused to lead proper evidence at the appropriate stage. For all these reasons, Mr. Karpe submits that this petition is misconceived and may be dismissed.

5. Rival contentions now fall for determination.

6. The scope of interference at the stage of issuance of process, is extremely limited. Most of the submissions of Mr. Tari sound in the arena of defence, which can hardly be gone into at this stage. From perusal of the complaint, it cannot be said even prima facie that the ingredients of Section 138 of N.I.Act, 1881, have not been complied with. On the basis of the complaint and the material produced in support of the complaint, it cannot be said that there was no case made out even for issuance of process. The petitioner has not denied the issuance of cheque.

7. The issue as to whether issuance of cheque is for valid consideration or not, is a matter for defence. The so called discrepancies pointed out by Mr. Tari, are also matters for defence. Besides, it is possible that there are explanations and answers, including the answer that it is the complainant, who has borne the expenses towards Road Tax and Insurance. At this

stage, it is premature even for this Court to go into all these issues and to record any finding one way or other. Suffice to note that this is not a fit case for quashing of process in exercise of extraordinary jurisdiction of this Court.

8. This petition is, accordingly, dismissed. There shall be no order as to costs.

9. It is clarified that the observations in this order are only for the purposes of deciding whether a case is made out to quash the process or not. Accordingly, if the matter proceeds, the learned Magistrate need not be influenced by any of the observations in the course of the trial.

M. S. SONAK, J.

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