

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 96 OF 2017

MR. KEITH DOMINIC FERNANDES., ... Petitioner
Versus
SHREE KALIKA URBAN CO-OPERATIVE
SOCIETY LTD., REP. BY ITS B.M.,
MR. VAMANRAO AMRUT TAR AND ANR., ... Respondents

Ms. Dolorosa Chiquita Tulkar, Advocate for the Petitioner.
Mr. Pravin N. Faldessai, Additional Public Prosecutor for the
Respondent No. 2.

Coram:- C. V. BHADANG, J.

Date:- 18th July, 2017

ORAL ORDER:

On 13.06.2017, a notice for final disposal was issued to the respondents. The respondent no. 1, who is the contesting respondent has chosen not to appear, although served. Looking to the short question involved, the petition is taken up for final disposal.

2. The petitioner is an accused in a complaint filed by the respondent no. 1, under Section 138 of the Negotiable Instruments Act, 1881 (Act, for short), which is pending before the learned Judicial Magistrate First Class at Mapusa. The witness on behalf of the respondent no. 1 had filed an affidavit of examination-in-chief. The petitioner filed an application (Exhibit-D/27), seeking permission to cross examine the said witness in the light of the provisions of Section 145 of the Act.

That application has been rejected by the learned Magistrate on 26.04.2017. Hence, this petition.

3. The learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of INDIAN BANK ASSOCIATION & OTHERS Vs. UNION OF INDIA, 2014 (5) SCC 590 and on the decision of this Court in the case of PEACOCK INDUSTRIES LTD. & OTHERS Vs. M/S BUDHRANI FINANCE LTD. & OTHERS, 2006 (5) MhLJ 162 and in particular, paragraph 25 thereof in order to submit that once, the accused seeks leave to cross examine the witness, the Court is obliged to grant the same, in view of the mandatory provisions of Section 145 of the Act. The learned Counsel fairly submits that the judgment of this Court in the case of PEACOCK INDUSTRIES LTD. (supra) was not brought to the notice of the learned Magistrate.

4. It appears that the question no. 2.(A) framed by this Court in the case of PEACOCK INDUSTRIES LTD. (supra), was whether in view of sub-section (2) of Section 145 of the Act, a party can insist for, oral examination-in-chief of the witness of the adversary. However it appears that in paragraph 25, there are certain observations made about the Court having no power to refuse permission to the accused to cross examine the witness of the complainant. In the overall circumstances, I find it

appropriate to send the application (Exhibit-D/27) back to the learned Magistrate for deciding it afresh, after hearing the parties, in accordance with law.

5. In the result, the following order is passed:

O R D E R

- (a) The petition is partly allowed.
- (b) The impugned order dated 26.04.2017, is hereby set aside.
- (c) The learned Magistrate shall decide the application (Exhibit-D/27) afresh, after hearing the parties, in accordance with law.
- (d) The petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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