

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 145 OF 2017

SHRI. SOMESHWAR NARAYAN NAIK., ... Petitioner

Versus

SHRI. ASHENDRA DEVIDAS NAIK., ... Respondent

Mr. Jatin Ramaiya, Advocate for the petitioner.

Coram:- C. V. BHADANG, J.

Date:- 21st August 2017

P.C.

The petitioner, who is an accused in a complaint under Section 138 of the Negotiable Instruments Act, is challenging the order, by which the learned Magistrate has refused to allow production of certain documents, namely Register of Basav Lodge and the copies of bills. The said order passed by the learned Magistrate has been confirmed by the learned Sessions Judge in Revision.

2. According to the respondent/ complainant, the respondent had paid an amount of Rs.2 Lakhs to the petitioner by way of temporary accommodation, in respect of which, there is an agreement executed in May, 2015. Further, according to the respondent, the petitioner failed to repay the said amount and the subject cheque was passed towards refund of the said amount.

As the said cheque got dishonoured, the respondent issued a statutory notice followed by the complaint.

3. It appears to be the defence of the petitioner that the respondent was staying in a lodge belonging to the petitioner at Belgaum, for a period between 2011 to March, 2015, on a condition of payment of an amount of Rs.3,500/- per month. It is further contended that the petitioner has taken security deposit of Rs.42,000/-, which was the advance of one year rent. The petitioner claims that the said amount was refundable, when the respondent was to vacate the lodge. It is further contended that the respondent informed the petitioner somewhere in March, 2015 that the respondent is leaving the lodge and the petitioner has to return the deposit of Rs.42,000/-. As the petitioner was not having the said amount, the petitioner issued two blank signed cheques of Syndicate Bank, Belgaum, which were handed over to the respondent. It is contended that the respondent is misusing the said cheques. In short, according to the petitioner, the subject cheque has not been issued towards the refund of the amount of Rs.2 Lakhs.

4. When the complaint case was fixed for arguments, the petitioner filed an application for production of Register of Basev Lodge and copies of bills, in order to show that the respondent was residing in the said lodge. The petitioner

claimed that he could not produce the extract of the said Register as also the bills as they were not traceable earlier.

5. The learned Magistrate has found that there is an inordinate delay in filing the application, seeking production of the documents, which is unexplained. It appears that in the statement under Section 313 of the Code of Criminal Procedure, the petitioner had stated that he wishes to examine himself in defence. According to the petitioner, he could not examine himself for want of the said documents.

6. The learned Sessions Judge has concurred with the order passed by the learned Magistrate. Hence, this petition.

7. I have heard the learned Counsel for the petitioner and perused record.

8. Prima facie, it appears that there is a written agreement, which is notarised, in which the petitioner has acknowledged the receipt of Rs.2 Lakhs. The petitioner has not set out particulars as to in whose custody the documents were, when they were misplaced and thereafter, when they were traced. The Trial is at the fag end i.e. at the stage of arguments. It has not been pointed out that a notice reply was issued setting out the aforesaid defence. Thus, I do not find that any case for interference is

made out. However, reserving the liberty to the petitioner to challenge the said order in an appeal, in the event the final judgment and order in the complaint is adverse to the petitioner, the petition is disposed of.

C. V. BHADANG, J.

SMA