IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1567 OF 2016

Jaya P. Aliani .... Petitioner

Vs.

Shri. Dilip P. Sharma & Anr. .... Respondents

Mr. Suresh A. Malkaini, Advocate for Petitioner.
Mr. Pawan Mali, Advocate for Respondent no.1
Mrs. Anamika Malhotra, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.
Date : 6th January, 2017

P.C.

1 The petitioner is the accused in the proceeding under Section 138 Negotiable Instruments Act initiated by respondent no.1. This petition challenges the order dtd. 30th July, 2014 passed by the trial court dismissing the petitioner's application under Section 311 Code of Criminal Procedure for recall of the complainant for further cross-examination. It also challenges the order dtd. 26th February, 2016 of the Sessions Court dismissing the petitioner's Revision Application No.108 of 2014.

2 Undisputed, the evidence of the complainant was completed on 25th July, 2013. Thereafter the statement of the petitioner under Section 313 or Cr.PC. was recorded and the petitioner examined his five witnesses. On 30th June, 2014, when the matter was to proceed for argument, he filed an application under Section 311 Cr.PC. for recalling respondent no.1 for further cross-examination. The reasons therefor stated at para 5 of the application are that when respondent no.1 was being cross-examined, he could not be confronted with his Income-Tax returns and balance-sheet as the same were not available to the petitioner. The same became available only when the petitioner summoned an officer from the Income-Tax Department. It is next alleged that respondent no.1 had suppressed his bank account with Federal Bank. Hence, respondent no.1 is required to be confronted with the suppression. The third reason stated in para 6 is that the petitioner has come to know that respondent no.1 is a money-lender having registered with the Assistant Registrar of Money Lenders. He needs to be confronted with this fact, also.

3 The application was opposed by respondent no.1 on various grounds including the ground that the application was filed by the petitioner to delay the proceedings. The learned Magistrate, has in the impugned order considered all the three reasons set up by the petitioner and dealt with the same. As regards the documents produced through the Income-Tax

department, he notes that respondent no.1 has admitted the same including the contents thereof. Therefore, there was no need to confront respondent no.1 with those documents. Secondly there was delay on the part of the petitioner in filing the application under Section 311 Cr.P.C. As regards the third reason, it holds that the same is not available to the petitioner since it has never been his defence that the transaction of the loan in question was a money lending transaction.

4 Being aggrieved by the dismissal of the application, the petitioner had approached the Sessions Court by filing Revision Application No.108 of 2014. The Sessions Court rejected the revision Application by it's reasoned order dtd. 26th February, 2016. It has observed that the application at Exhibit 83 filed by the petitioner does not disclose such a ground as to allow re-examination and cross-examination of the witness. The application has been filed in a casual manner and the possibility of protracting the trial at the hands of the petitioner cannot be ruled out. It has further been observed that the application was an attempt on the part of the petitioner to fill up lacuna in its defence.

5 Perusal of the application at Exhibit 83, the order of the learned Magistrate and the order of the Sessions Court clearly make out the case for dismissal of the petition. The grounds set out in paras 5 and 6 of the application at Exhibit 83

are not sufficient to justify the application for recall. As has been observed by the learned Magistrate once respondent no.1 admitted the documents of Income-Tax returns, including its contents, there is no question of confronting him with the documents by way of cross-examination. As regards suppression of the bank account with the Federal Bank and the application that respondent no.1 is a money-lender, it was necessary for the petitioner to cover these grounds when respondent no.1 was cross-examined. The present petition is obviously is nothing but an attempt on the part of the petitioner to protract the criminal proceedings. Therefore, the petition is dismissed with costs, quantified at Rs.10,000/-.

(Smt. R.P. SondurBaldota, J.)