

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 129 OF 2018

Rajesh Arun Mahajan ... Petitioner
Versus
Sumit Rajendra Prasad Singla & Anr. ... Respondents

Shri Arun De Sa with Shri Sidhesh Shet, Advocates for the
Petitioner.

Shri Yogesh Nadkarni with Ms. Divya Shirgam and Shri S.
Sawant, Advocates for the Respondent No. 1.

CORAM:- C.V. BHADANG, J.

DATE:- 6th AUGUST 2018

ORAL ORDER:

The challenge in this petition, at the instance of the original accused, is to the order dated 19.06.2018 (below Exhibit-13), passed by the learned Additional Sessions Judge, South Goa, Margao in Criminal Appeal No. 15/2018.

2. The brief facts are that the respondent no. 1 had filed a complaint, under Section 138 of the Negotiable Instruments Act, against the petitioner before the Judicial Magistrate First Class at Margao, which was registered as Criminal Case No. 170/OA/NIA/2016/II.

3. Admittedly, there is an agreement dated 13.01.2013 entered into between the parties, whereunder the dispute pertaining to the earlier MOU dated 03.05.2010 was settled. The agreement dated 13.01.2013 states that the petitioner (first party) had approached the respondent no. 1 (second party) and had assured him that the petitioner shall pay Rupees Three Crores Thirty Lakhs along with additional interest of Rupees Seventy One Lakhs and had requested the respondent no. 1 to grant time till 27.03.2014, to effect the full payment of the dues. It was specifically agreed that the first party/petitioner owes an amount of Rupees Three Crores Eighty One Lakhs, towards the remaining liability and towards the discharge of the same, there were four postdated cheques signed and issued by the petitioner, in favour of the respondent no. 1.

4. In the present case, we are only concerned with cheque bearing no. 164604 dated 27.03.2014 in the sum of Rupees Seventy One Lakhs, issued by the petitioner in favour of the respondent no. 1, drawn on the account of the petitioner with the Axis Bank. As the cheque was dishonoured on presentation, the respondent no. 1 issued a statutory notice and filed a complaint as aforesaid, against the petitioner.

5. Before the Magistrate, the respondent no. 1 examined himself as PW-1 and his chief examination was concluded on 03.09.2016, on which day, the learned Advocate G. Das for the petitioner was present. The cross examination of PW-1 on behalf of the petitioner was deferred to 13.02.2017, on which day, it was adjourned to 06.03.2017, 24.03.2017, 17.04.2017 and then to 03.05.2017. On that day, the petitioner was present and orally requested for time on account of absence of his Advocate. It appears from the record that the petitioner was afforded an opportunity to cross examine PW-1. However, the record shows that there was no cross examination by the petitioner in person. Further, the record discloses that on the same day, application Exhibit-D/48, came to be filed on behalf of the petitioner, for issuing summons to the Branch Manager of the Axis Bank. On 25.05.2017, the concerned witness i.e. the Branch Manager of the Axis Bank was present, however, at the request of the petitioner, who appeared in person, time was granted, subject to costs of Rs.500/- to be paid to the witness. It appears that on 19.06.2017, the evidence of another witness on behalf of the respondent no. 1, namely Satyajeet Devadiga (PW-2) was recorded and he was cross examined by the learned Counsel for the petitioner.

6. On 31.07.2017, statement of the petitioner was recorded under Section 313 Cr.P.C. and the matter was adjourned for defence evidence, if any. On 04.09.2017, it was represented on behalf of the petitioner that he shall not lead evidence in defence and the complaint was posted for final arguments. On 18.09.2017, oral arguments were heard and the petitioner also filed written notes of arguments, on 25.09.2017. The learned Magistrate by a judgment and order dated 22.11.2017, convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay a compensation of Rupees One Crore Forty Two Lakhs and in default thereof, to undergo further simple imprisonment for six months. Feeling aggrieved, the petitioner challenged the same before the learned Sessions Judge in Criminal Appeal No. 15/2018, which is pending.

7. The petitioner filed an application (Exhibit-D/13), before the learned Sessions Judge, purportedly, under Section 391 of Cr.P.C., to produce certain documents as set out in para 11 of the application, including the copies of MOU, the Bank statements, police complaint etc. There are about 188 receipts, which were sought to be produced. It was contended that the

petitioner had repaid the amount and the production of the documents is necessary to bring the truth on record. It was prayed that the documents be taken on record and marked as exhibits and the criminal case may be sent back to the learned Magistrate, only to cross examine the complainant and to examine the petitioner in defence. The learned Sessions Judge, by an order dated 19.06.2018, dismissed the application, which order is subject matter of challenge in this petition.

8. I have heard Shri De Sa, the learned Counsel for the petitioner and Shri Nadkarni, the learned Counsel for the respondent no. 1. Perused record.

9. It is submitted by Shri De Sa, the learned Counsel for the petitioner that the essential ingredient about the cheque being issued towards discharge of a legally enforceable debt is not made out in the complaint. Secondly, it is contended that there is no proper opportunity granted to the petitioner to cross examine PW-1, which has resulted into prejudice to the petitioner and in the interest of a fair trial, the application (Exhibit-D/13) ought to have been granted. It is contended that the production of the documents, ought to have been allowed.

On behalf of the petitioner, reliance is placed on the decision of the Supreme Court in the case of (i) *Rajendra Prasad Vs. Narcotic Cell, Through its Officer-in-Charge, Delhi* (1999) 6 SCC 110; (ii) *Rambhau & Another Vs. State of Maharashtra*, (2001) 4 SCC 759 and (iii) *Usha Kolhe Vs. State of Maharashtra*, AIR 1963 SC 1531, in order to submit that the Court has ample powers under Section 391 of Cr.P.C., to allow production and in the present case, the same would not amount to an attempt to fill up the lacuna in defence. Except this, there are no other contentions raised.

10. On the contrary, it is submitted by Shri Nadkarni, the learned Counsel for the respondent no. 1 that the petitioner was represented by an Advocate and in fact, the petitioner cross examined PW-1 on 13.02.2017. It is submitted that subsequently, when PW-2 was examined and cross examined, there was no claim made for recall of PW-1, for the purposes of cross examination. It is submitted that during the pendency of the trial before the Magistrate, no such claim was ever made and the prayer for production of documents and for remanding the complaint for cross examination of PW-1, was made for the first time, in appeal, before the learned Sessions Judge. Insofar as the essential ingredient of the cheque being issued in

discharge of a legally enforceable debt or liability is concerned, the learned Counsel has pointed out para 12 of the complaint, in order to submit that such a case is indeed made out. It is pointed out that the execution of the agreement dated 13.01.2013 and the signature on the subject is not disputed. It is submitted that the Sessions Judge has rightly dismissed the application. It is submitted that the decisions relied upon by the petitioner are distinguishable on facts.

11. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out. At the outset, it is necessary to note that the criminal appeal, challenging the conviction and sentence awarded to the petitioner is still pending before the learned Sessions Judge and the challenge in this petition is only to the order, rejecting the application Exhibit-D-13. Normally, this Court would be slow to interfere with such orders in exercise of supervisory jurisdiction, under Article 227 of the Constitution of India or inherent powers under Section 482 of Cr.P.C. *Prima facie*, it appears that the petitioner has not disputed the execution of the agreement dated 13.01.2013, in which the petitioner (first party) had admitted the liability of Rupees Three Crores Eighty One Lakhs. Clause 6 of the

agreement sets out the details of four cheques, out of which, cheque in the present case is one dated 27.03.2014 for Rupees Seventy One Lakhs. The signature and passing of the said cheque in favour of the respondent no. 1, is also not disputed. It further appears that in para 12 of the complaint, there is a specific case made out about the agreement dated 13.01.2013 and the issuance of the postdated cheques, including the subject cheque, as aforesaid. Thus, the contention that the complaint does not make out the basic ingredient, in my considered view, *prima facie*, cannot be accepted.

12. Insofar as opportunity to the petitioner to cross examine PW-1 is concerned, the record as noticed above, would bring out that PW-1 was indeed cross examined by the learned Counsel for the petitioner on 13.02.2017 and further cross examination was deferred at the request of the petitioner. The matter was subsequently adjourned to 03.05.2017 and on that day, an opportunity was given to the petitioner, who appeared in person to cross examine the witness and the Court recorded that cross examination was "Nil". The record brings out that another witness being PW-2, was cross examined on behalf of the petitioner with no demur. Even in his statement under Section 313 of Cr.P.C., there was no such grievance made. The

following answer to question no. 16 is significant and it reads thus:

Q.16. Do you wish to say anything in this case ?

Ans. This case is one of three cases the complainant has filed against one single original transaction. The motive being to intimidate and recover massive amounts of interest money from me. Though, I do not dispute the original principal amount of Rs.2,10,00,000/-, I strongly dispute the very high rate of interest being forcibly charged on me. I request that all three cases be brought together to allow me to fulfill my obligations without having to pay exorbitant penalties, since I have never disputed the principal amount.

(Emphasis supplied)

13. In the written arguments filed on 18.09.2017 also, there is no grievance made about any prejudice caused, on account of the petitioner being asked in person to cross examine PW-1. Insofar as the production of certain receipts are concerned, the learned Sessions Judge has noticed that there is no issue raised, insofar as the execution of the agreement dated 13.01.2013 or regarding the issuance of the cheques. It appears that all that was urged in the written arguments is about the financial difficulty faced by the petitioner and the issue about

interest. The learned Sessions Judge has also noticed that all the additional documents sought to be produced, are prior to the agreement dated 13.01.2013 and it is in that view of the matter, that the application has been dismissed by the learned Sessions Judge. I have carefully gone through the impugned order and I do find that it requires interference in the supervisory or inherent jurisdiction of this Court.

14. The decisions relied on behalf of the petitioner turned on their own facts. There cannot be any manner of dispute that under Section 391 of Cr.P.C., the Appellate Court can take further evidence or directed it to be taken, if it thinks, that the additional evidence is necessary. The question whether, the additional evidence is necessary or not, would depend upon facts and circumstances of each case.

In the result, the petition is dismissed. Needless to mention that the learned Sessions Judge shall decide the appeal on its own merits and in accordance with law, without being influenced by the observations herein, which are essentially limited, in the context of the challenge to the impugned order.

C.V. BHADANG, J.

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