

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 172 OF 2017**

Shri Ramanjaneya Bangla,
Aged about 37 years, Indian,
Son of Shri B. Ganesh, presently residing
at H. No.1588, Orda, Candolim,
Bardez-Goa.

..... Petitioner

V e r s u s

1) State of Goa, through the
Ld. Public Prosecutor, having its
office at Panaji-Goa.

2) Mr. Noel Athaide,
major in age,
Indian National, Proprietor
of Xtra Eye Surveillance Systems,
Mount View Apartments,
Besides Alcon Hyundai Showroom,
Alto- Porvorim, Bardez-Goa.

.... Respondents.

Mr. Neelesh A. Takkekar , Advocate for the Petitioner.

Mr. Ganesh R. Naik, Advocate for Respondent no.2.

Coram:- C. V. BHADANG, J.
Date:- 30th January 2018.

ORAL JUDGEMENT:

Rule, made returnable forthwith. Shri Naik, the learned counsel for the second respondent no.2 waives service. Heard finally by consent of parties.

2. The challenge in this petition under Article 227 of the Constitution of India r/w section 482 of the Code of Civil Procedure 1908 (Code, for short) is to the Order dated 5/5/2017 passed by the learned Judicial Magistrate First Class, Mapusa issuing process against the petitioner in a complaint under section 138 of the Negotiable Instruments Act 1881 (Act, for short). Normally this Court would be slow to interfere with the order merely issuing process. However, this is a case where there is total non application of mind by the learned Magistrate in issuing the process. A bare perusal of the subject cheque shows that it is signed by one Dhruv Sharma in his capacity as the authorized signatory of 'Guest Houser Pvt. Ltd.' which is said to be a company incorporated under the Companies Act. Curiously enough the complaint under section 138 of the Act came to be filed against the petitioner, who is one Ramanjaneya Bangla. It is difficult to understand as to how a complaint can be filed or a process can be issued against the petitioner when the subject cheque is signed by Dhruv Sharma and that too, as an authorized signatory of Guest Houser P. Ltd.. The learned counsel for the petitioner also placed reliance on the decision of the Supreme Court in the case of **Aneeta Hada Vs. Godfather Travels and Tours P. Ltd. (2012) 5 SCC 661**, in which the Hon'ble Supreme Court has held that there is a mandatory requirement to implead the company as one of the accused if the cheque is signed by the Director or authorized signatory of the company. The record

discloses that there is non compliance on this aspect also.

3. Shri Naik, the learned counsel for the respondent no.2 has submitted that the statutory notice was issued to the petitioner.

4. Here again it is difficult to understand how a statutory notice under section 138 of the Act can be issued to the petitioner when he is not a signatory to the subject cheque. The complaint is in gross abuse of the process of the Court. In such circumstances, the petition is allowed. The impugned order is hereby quashed and set aside. The complaint filed by the second respondent stands dismissed. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

Ap/-