

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 43 OF 2018

Mr. Nazir Khan,

Age, 47, Indian National, R/o. Flat
No. 302, 3rd Floor, Mormugao
Avenue, Near Desterro Church,
Vasco – Goa.

... Petitioner

V/s.

- 1 State of Goa, through Chief
Secretary, Secretariat, Porvorim,
Bardez- Goa.
- 2 Panaji Police Station,

through its Police Inspector, Panaji,
Goa.
- 3 M/s. Sunny Bay Pvt. Ltd.

Registered address at 2223,
Section C-2, Vasant Kunj, New
Delhi – 110 070 (South West Delhi) ... Respondents

Mr. Wilbur Menezes, Advocate for the petitioner.

Mr. P. Faldessai, Additional Public Prosecutor for the
respondents No.1 and 3.

**Coram:- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.**

Date:- 11th October, 2019

ORAL JUDGMENT: (Per C.V. Bhadang,J.)

Heard Mr. Menezes, learned Counsel for the petitioner and Mr. Faldessai, learned Additional Public Prosecutor for the respondent Nos. 1 and 2. None appears for the respondent No.3, the original complainant.

2. By this petition under Article 226 of the Constitution of India r/w. Section 482 of the Code of Criminal Procedure ('Code', for short), the petitioner is seeking quashing of the FIR No.249 of 2017 registered against the petitioner, with Panaji Police Station for the offence punishable under Section 406, 420 r/w. Section 34 of Indian Penal Code (IPC, for short). The aforesaid FIR is registered on the basis of the complaint lodged by the 3rd respondent.

3. It is a matter of record that the impugned FIR came to be registered on 14/11/2017. Prior thereto the petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act, against the 3rd respondent, accompanied by an application for the condonation of delay dated 22/03/2017.

4. It is submitted by the learned Counsel for the petitioner that the impugned FIR is by way of a counterblast to the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act. The learned Counsel has placed reliance on the decision of the Hon'ble Supreme Court, in the case of Ashok Kumar Gupta v/s. State of Uttar Pradesh and another (2017) 11 SCC 239. It is submitted that where the criminal complaint is found to be lodged by way of a counterblast to the complaint under Section 138 of the Negotiable Instruments Act, it would be clearly in abuse of the process of law. It is submitted that in similar circumstances the Hon'ble Supreme Court has quashed the complaint and the FIR.

5. Mr. Menezes, learned Counsel for the petitioner submits that the complaint (alongwith the application for condonation of delay) which is filed by the petitioner under Section 138 of the Negotiable Instruments Act has since been withdrawn on 11/03/2019. In the submission of the learned Counsel for the petitioner, therefore, the present petition has to be allowed.

6. Mr. Faldessai, learned Additional Public Prosecutor submitted that the dispute is essentially between the petitioner and the 3rd respondent and this Court may pass an appropriate order as may deemed just and necessary.

7. We have considered the submissions made. It does appear that the complaint on the basis of which the impugned FIR is registered is by way of a counterblast to the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act. In similar circumstances, the Supreme Court, in the case of Ashok Gupta (*supra*) has quashed the FIR. In the present case, there is an additional circumstance, on account of which, we are inclined to quash the FIR, namely that the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act (alongwith the application for condonation of delay) has been withdrawn by the petitioner. Thus, the dispute, if any, between the parties appears to have been settled and that is why in all probability, despite service, the 3rd respondent has chosen not to appear. In such circumstances, in our opinion the petition has to succeed. In

the result, the petition is allowed. Rule is made absolute in terms of prayer clause (a).

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

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