

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 27 OF 2019

HIRALAL GOVEKAR., ... Petitioner

Versus

SHEELA SURLAKAR AND ANR., ... Respondents

Mr. Galileo Francisco Teles, Advocate for the Petitioner.

Mr. John Abreu Lobo, Advocate for the Respondent No. 1.

Coram:- C. V. BHADANG, J.

Date:- 20th March 2019

ORAL ORDER:

Normally, this Court would be slow, in interfering with an order, merely issuing process. However, this is a case where interference is clearly warranted.

2. The petitioner/accused is challenging the order dated 07.09.2018, passed by the learned Magistrate, thereby issuing process against the petitioner for the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act (Act, for short).

3. It appears that a flat belonging to the respondent no. 1/complainant was given on leave and licence basis to the petitioner, which he vacated on 20.05.2018, however, according to the respondent no. 1, without paying the licence fee for four

months. Further, according to the respondent no. 1, the petitioner handed over a cheque in the sum of Rs.12,000/- bearing no. 538621 dated 30.04.2018, drawn on the State Bank of India, Alto-Porvorim Branch to the respondent no. 1, towards payment of licence fee for one month.

4. The respondent no. 1 deposited the said cheque for realisation on the same date in his Account with the Corporation Bank, Socorro Branch. The cheque was returned dishonoured on account of insufficient funds. The son of the respondent no. 1 issued a notice to the petitioner, demanding the said amount. The petitioner failed to comply with the said notice and did not even issue a reply. It was in these circumstances that the respondent no. 1 filed a complaint under Section 138 of the Act against the petitioner, in which, the impugned order of issue of process is passed.

5. I have heard Mr. Teles, the learned Counsel for the petitioner and Mr. Lobo, the learned Counsel for the respondent no. 1. Perused record.

6. During the hearing of the arguments at bar, it transpired that although, according to the respondent no. 1, the cheque was simply hand over by the petitioner to the respondent no. 1, allegedly towards the payment of one month's licence fee, it is

not the case that the cheque is issued by the petitioner, much less on his account with the State Bank of India. There is a letter produced from the State Bank of India stating that the Account No. 20319563384, on which, the cheque was issued does not stand in the name of the petitioner. It is trite that a complaint under Section 138 of the Act, lies only against the drawer of the cheque, when the cheque issued by the drawer, on his account is dishonoured for want of funds. It was not seriously disputed during the course of the arguments at bar that the petitioner is neither a drawer nor the cheque is issued on his account. It is thus difficult to see as to how, process can be issued against the petitioner in the absence of the basic requirements of the offence under Section 138 of the Act being satisfied. In that view of the matter, the impugned order cannot be sustained. The criminal writ petition is accordingly allowed. The impugned order is hereby set aside. The complaint filed by the respondent no. 1 is hereby dismissed. Needless to mention that this will not prevent the respondent no. 1 from taking any other action, if any, against the respondent no. 1, if permissible and if so advised in law.

C. V. BHADANG, J.