

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.178 OF 2019

M/s. Gnandrum Enterprises,
Zuarinagar, Goa-403726.
Through its partner
Mr. Gnandrum Nadar,
Vasco Da Gama.

....Petitioner

V/s.

1. M/s. Agencia De Goa,
Shop No.1, Block A,
Colaso Arcade,
Destero Wado,
Vasco Da Gama, Goa.
Through its Managing Partner,
Mr. Sunil Dessai.

2. Mr. Sunil Dessai,
C/o. M/s. Agencia De Goa,
Shop No.1, Block A,
Colaso Arcade, Destero Wado,
Vasco Da Gama.

... Respondents

Shri B.P. Sardessai, Advocate for the Petitioner.
Shri M.S. Joshi, Advocate for the Respondents.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date : 4th November, 2019

ORAL JUDGMENT :

Rule. Respondents waive service. By consent, returnable
forthwith and taken up for hearing and final disposal.

2. The petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act against the respondents. The petitioner sought to produce certain documents on record in the form of an invoice generated by the petitioner firm. He submitted that the document was not accompanied with a certificate under Section 65-B of the Indian Evidence Act. The petitioner, therefore, moved an application for swearing an affidavit under Section 65-B of the Indian Evidence Act, *inter alia*, seeking leave to produce a CD on record containing the invoice. The application was allowed. The petitioner was to adduce evidence after producing documents on 03/06/2019. However, on 03/06/2019, the advocate of the petitioner had to attend a funeral of one Sabajeet Sharma, who died in an accident on 02/06/2019. The learned Magistrate by an impugned order dated 03/06/2019 found the petitioner and his Counsel absent and, therefore, closed the chief of PW1.

3. It appears from the roznama dated 17/04/2019 that the petitioner had sought time. It was granted by the Trial Court by way of last and final opportunity. It was made clear that if the petitioner fails to produce documents on the next date i.e. the date on which the

impugned order was passed, his evidence would be closed.

4. However, it appears that on 03/06/2019, the petitioner had met with an accident in support of which he had tendered a medical certificate along with an affidavit of the learned Counsel indicating the reason as to why he could not remain present. The petitioner's evidence ought not to have been foreclosed by the learned Magistrate, so abruptly without giving full opportunity to prove the documents in question as that would tantamount to denial of justice.

5. In order to give full opportunity to the respective parties to adjudicate the matter on merits, the impugned order needs to be quashed and set aside.

6. As such, the impugned order dated 03/06/2019 is quashed and set aside. The petitioner shall be permitted to produce the documentary evidence on record. The accused shall have an opportunity to cross-examine the petitioner after production of the documents/evidence on record.

7. Rule is made absolute in the above terms. The petition stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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