

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 177 OF 2018

Mr. Suresh Subray Volvoikar & Anr. ... Petitioners

Versus

Mr. Alankar Chandrakant Parkar ... Respondent

Shri Joaquim Godinho, Advocate for the Petitioners.
Shri Mahesh Amonkar, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 12th February 2019

ORAL ORDER :

It is the contention of Shri J. Godinho, learned Advocate for the petitioners that although there have been lapses on the part of the petitioner/accused in pursuing the matter, nonetheless, he had cooperated with the Court and had even gone to the extent of examining himself after his statement under Section 313 Cr.P.C. was recorded on closure of the complainant's case. It was in fairness that an opportunity be granted to him to further cross-examine the complainant in the interest of justice.

2. Shri Mahesh Amonkar, learned Advocate for the respondent vehemently opposed such a request and on the premise that ample opportunity was given to the petitioner and

that the matter was listed for final hearing when the present application came to be moved at the instance of the petitioner.

3. i have considered their submissions, perused the order under challenge and from which it is apparent that no doubt there has been a delay at the instance of the petitioner/accused in moving the application for recall of the complainant, nonetheless, looking to the rigors of the complaint under Section 138 of the Negotiable Instruments Act, 1881 and that a fair opportunity has to be afforded to the petitioner to canvass his case, it would be in fairness and in the interest of justice to allow such an application where there are wide powers vested in the Court to do so.

4. In the circumstances, the impugned order is quashed and set aside. The learned JMFC is directed to afford an opportunity to the petitioner to recall and cross-examine the complainant. It is made amply clear to the petitioner that no adjournment shall be sought for before the learned JMFC nor shall the learned JMFC entertain any such request on any ground whatsoever. The petition is allowed subject however to the costs of ₹5,000/- which the petitioner shall pay to the

respondent. The learned JMFC will then accordingly proceed to dispose off the matter as expeditiously as possible, subject to the payment of costs to the respondent/complainant and the appearance of the parties before the learned JMFC. The parties are directed to appear before the learned JMFC on 18/02/2019 at 10.00 hrs. The learned JMFC to dispose off the case latest by 15/03/2019.

NUTAN D. SARDESSAI, J.

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