

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5071 OF 2019

DIVYESH P. SHAH AND ANR.

)...PETITIONERS

V/s.

M/S.CLIQUE FINVEST PVT. LTD. AND ORS.

)...RESPONDENTS

Mr.Girish Agarwal, Advocate for the Petitioners.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 7th OCTOBER 2019

PC :

1 By this petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioners/original accused in a complaint under Section 138 of the Negotiable Instruments Act is assailing the order below Exhibit 35 in Criminal Case No.1752/SS/2016 passed by the learned Metropolitan Magistrate, thereby allowing the application

of respondent nos.1 and 2/original complainant for recalling witness and for substituting and interchanging the document.

2 Heard the learned counsel appearing for the petitioners/original accused. He drew my attention to paragraph 2 of the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act filed by respondent no.1/original complainant and contended that the said complaint was for dishonour of cheque nos.863024 dated 8th July 1997 and the amount under the cheque was Rs.15 lakh. However, in submission of the learned counsel for the petitioners/original accused, in cross-examination when confronted with the documents proved in the examination-in-chief, it is revealed and admitted by the witness that those documents are not pertaining to the subject criminal case. My attention is drawn to paragraphs 9 and 10 of the cross-examination of PW1 Jayesh Majithia to point out that the disputed cheque relied by the prosecuting party during the course of evidence was totally different, so also the statutory notice. With this, it is argued that after a lapse of one

year, an application for recall of witness Prosecution Witness No.1 Jayesh Majithia came to be filed by the respondents/original complainant and that application came to be allowed with totally unreasoned order. My attention is drawn to the impugned order dated 19th September 2019 in which the learned trial court has observed that the application needs to be allowed, subject to imposing certain conditions and that will not cause any prejudice to either of the parties. With this, it is argued that the impugned order needs to be quashed and set aside.

3 I have considered the submissions so advanced and also perused the impugned order as well as the complaint and deposition of Prosecution Witness No.1.

4 The complaint is in respect of the offence punishable under Section 138 of the Negotiable Instruments Act. The cheque involved in the complaint was bearing no.863024. It is dated 8th July 1997 and for a sum of Rs.15 lakh. The same is claimed to have been dishonoured. During the course of cross-examination,

it was suggested to the Prosecution Witness No.1 examined on behalf of the complainant that statutory notice produced on record at Exhibit 41 was not sent on 6th August 1997 and thereafter, the prosecution witness stated that wrong documents are produced on record in present proceeding and documents are interchanged.

5 Though belatedly, on behalf of the complainant (respondents herein) an application for recalling the witness was made and after hearing the parties, the same came to be allowed by the order dated 19th September 2019. The learned trial court has allowed the complainant to recall the witness and to interchange the documents.

6 It is seen from the record that the complainant had filed four complaints in respect of the offence punishable under Section 138 of the Negotiable Instruments Act against the petitioners/original accused persons. Those complaints are in respect of different cheques of different denominations. Different

demand notices are seen to have been sent. In that process, it is seen that in subject Criminal Case No.1491/SS/1997, relevant documents of other cases came to be filed.

7 Primary object of the court is to decide the matter finally by taking it to the logical end. Technicalities of procedure should not come in the way of the court to do the final justice. In the case in hand, the complaint is having categorical averments in respect of specific cheque and in respect of specific statutory notice. However, it appears that, inadvertently, wrong documents were filed in the said complaint case by the complainant and that fact was revealed during the course of cross-examination of the witness for the prosecuting party. If that procedural irregularity is corrected by the impugned order, then by no stretch of imagination it can be said that the impugned order is illegal. In order to do complete justice between the parties, the learned trial court has adopted correct procedure by applying law correctly.

8 In this view of the matter, no infirmity can be found in
the impugned order.

9 The writ petition is rejected.

(A. M. BADAR, J.)