

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 123 OF 2019

KIRAN M. CHODANKAR

... Petitioner

Versus

SHRIRAM TRANSPORTS FINANCE CO.

LTD., REP. BY ITS CONST. ATTORNEY,

SAMEER G. KANEKAR AND ANR.

... Respondents

Shri Byron Rodrigues, Advocate for the petitioner.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 2nd January, 2020

ORAL ORDER:

Heard Shri B. Rodrigues, learned Advocate for the petitioner.

2. None for the respondent no.1 despite due opportunity time and again.

3. It was the contention of Shri Rodrigues, learned Advocate that the petitioner was not allowed to lead evidence upon his application under Section 315 CrPC despite there being no serious objection on behalf of the respondent no.1. The learned

JMFC had dismissed his application and closed the defence evidence which was on the basis that there was no material led by the petitioner. The learned JMFC had recorded a finding that there was no evidence led by the petitioner to prove that the loan was paid off by him and/ or that the No Dues Certificate was given by the respondent no.1/complainant. This judgment was upheld by the learned Sessions Judge in appeal.

4. Shri Rodrigues, learned Advocate placed reliance in **Krishnan v/s. Krishnaveni** [AIR 1997 SC 987] to buttress the contention that whenever there is a grave miscarriage of justice the High Court can exercise inherent powers and supervisory powers under Sections 482 and 483 of the CrPC. He further placed reliance in **Dhananjay Mahadev Dessai v/s. Canacona Urban Co-operative**[2016(3) Bom.C.R.687] where a learned Single Judge of this Court held that if the Court finds that recall/ re-examination is necessary for a just decision of the case recall is permitted while setting aside the impugned order refusing to recall the witness.

5. Coming to the facts of the present case it is apparent that although the petitioner had moved an application under Section

315 Cr.P.C. for his examination as a defence witness which was not seriously opposed on behalf of the respondent no.1, nonetheless, the learned JMFC in his wisdom held that it was an attempt to delay the proceedings and that despite giving enough opportunity, the petitioner had not led any defence evidence despite the fact that the application was moved for the first time on that date. It is apparent that there was a denial of an opportunity to the petitioner to establish his case that he was issued a No Dues Certificate by the respondent no.1 as on 05/11/2009 and further that they had no objection to the cancellation of the note endorsed on the RC Book addressed to the Registering Authority for cancelling the Hire Purchase Agreement.

6. In view thereof, this was a clear case of denial of justice to the petitioner by the learned JMFC who denied an opportunity of leading defence evidence which had resulted in a finding by the learned JMFC that the petitioner has failed to establish his case in defence resulting in a miscarriage of justice. In view thereof, the petition is allowed, the impugned judgment of conviction passed by the learned JMFC and confirmed by the Sessions Judge is

quashed and set aside. The matter is remanded to the learned JMFC to allow the petitioner to lead the evidence in defence for which the parties are directed to appear before the learned JMFC, Margao in Criminal Case No.180/AO/NI/2010/III on 15/01/2020 at 10.00 hours.

7. The petition accordingly stands disposed off.

NUTAN D. SARDESSAI, J.

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