

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 29 OF 2020

Hyder Ali Damania

..... Petitioner

V e r s u s

Neli Kunhili Mohammed Nizzaz

@ N. K. Mohammed Nizzar & anr.

.....Respondents

Mr. Ajit Kantak and Mr. Raunak Ajit Kantak, Advocates for the Petitioner.

Mr. Rohit Bras De Sa and Ms. V. Shet, Advocate for the Respondent No.1.

Mr. G. Nagvenkar, Additional Public Prosecutor for the Respondent no.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 6th April, 2021

ORAL ORDER

In a proceedings for an offence punishable under Section 138 of the Negotiable Instruments Act, initiated at the behest of the Petitioner, in exercise of powers under Section 91 of the Criminal Procedure Code, the learned Magistrate has passed orders impugned dated 08.11.2019, below exhibits D-52 and D-53, whereby the notice is directed to the Manager, IDBI Bank to produce cheque no. 246394 dated 15.03.2013 for an amount of

₹ 2,30,000/- and further directions to the Manager, IDBI Bank to produce the specimen signature of the accused.

2. The learned Counsel for the Respondent no.1 in response to the claim put forth in the Petition, in the matter of challenge raised to the aforesaid orders, would invite attention to following pleadings in reply :

"41. I say that however I do not have any objection for the Petitioner to cross-examine the said witness who has been summoned to produce the said documents, if this Hon'ble Court so allows.

42. I say that the Petitioner can also re-examine Pw. 4 in terms of Section 138 of the Evidence Act after the cross-examination by me. I say that his right of re-examination is not taken away by the Trial Court."

3. The Counsel for the Petitioner, in the light of the aforesaid observations, submits that even if the orders impugned are permitted to stand, the interest of the Petitioner-Complainant may not be suffered/prejudiced as the Petitioner has already discharged the initial burden. According to him, in the wake of the aforesaid submissions of the Respondent no.1, if required, he

may be granted liberty to cross-examine Pw.4 on the aforesaid documents which are permitted to be produced vide impugned orders.

4. In the aforesaid background, particularly having regard to the cause for which the powers are exercised by the learned Magistrate under Section 91 of Cr. P.C. and the fact that the Respondent no.1 has come out with the defence of payment of excess amount, in case, if the Petitioner takes out an application for cross-examining the said witness, Pw.4, or for leading any additional evidence, it is expected of the learned Magistrate to deal with the same in the light of the submissions made by the Respondent no.1 in Paras 41 and 42 (supra) so as to avoid any prejudice to the Petitioner.

5. With the above observations, the Criminal Writ Petition stands disposed of.

NITIN W. SAMBRE, J.