

CHIMANLAL DAHYBHAI PATEL., ... Petitioner
VS
EDWARD D'SOUZA., ... Respondent

Mr. Anthony D'Silva, Advocate for the Petitioner.

Coram : M. S. SONAK, J
Date : 15th February, 2021

P.C.

Heard Mr. A. D'Silva, learned counsel for the Petitioner.

2. The challenge in this petition is to the order dated 24th February, 2020, by which the learned JMFC has dismissed the Petitioner's application purportedly made under Section 91 of Code of Criminal Procedure, 1973 (Cr.PC).

3. The Petitioner is the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in connection with dishonour of a cheque for an amount of Rs.4,00,000/-.

4. The Petitioner by his application dated 6th January, 2020 has sought for direction to the Complainant (Respondent herein) to

produce the original documents of acknowledgment card of legal notice, whatsapp message, email reply to the legal notice in trial case No. OA/491/2018.

5. The Trial Court has recorded that the Respondent herein has clearly mentioned that the AD card is not in his possession. Besides, there is evidence on record to indicate that there were any communication by whatsapp or email. In these circumstances, the JMFC was quite right in dismissing the Petitioner's application.

6. The Petitioner, apart from filing such a frivolous application in order to delay the proceedings has succeeded in delaying the proceedings before this Court as well. On 6th March, 2020, this Court issued notice to the Respondent which was made returnable on 30th March, 2020. On this date, liberty was granted to the Petitioner to seek adjournment before the Trial Court on the ground of matter is pending before this Court.

7. Accordingly, it was necessary for the Petitioner to take emergent steps to serve the Respondent so that the matter is not unnecessarily delayed either before this Court or before the Trial Court. However, until 16th April, 2020 no process fees were paid. It is only on 27th January, 2021, the learned counsel for the Petitioner applied for time and he was granted time as a last opportunity to pay the process

fees.

8. By filing frivolous application before the Trial Court followed by the present petition before this Court, the Petitioner has succeeded in delaying his prosecution for no good reason. Accordingly, the Petitioner will have to pay the cost which has assessed at Rs.10,000/-. Such costs will have to be paid within four weeks from today.

9. The Petitioner to place this order before the Trial Court on the next date which is possibly 20th February, 2021. The Trial Court to ensure that the costs are indeed paid by the Petitioner. Accordingly, the petition is dismissed with costs as aforesaid.

10. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J

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