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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 612 OF 2021

1. M/s.Shirt Company (India) Ltd.
2. Shivanand Bhoja Shetty
3. Ashwin Shivanand Shetty
4. Balkrishna Bhoja Shetty
5. Priya Rahul Bhawe
6. Himanshu Basantlal Garja

...Petitioners

Versus

1. Mr. Vipin Bhimraj Shah (Proprietor,
M/s. Vipin Shah Associate)
2. The State of Maharashtra

...Respondents

Mr. Kunal H. Kamble for the Petitioners.

Mr. Jehangir Khajotia i/b Minal S. Parab for the Respondent No.1.

Mr. A.R.Patil, A.P.P for the Respondent No.2-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 18th AUGUST, 2021

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

3. By this petition, the petitioners have impugned the order dated 12th January, 2021 passed by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai, by which, the learned Judge rejected the application preferred by the petitioners (Exh.64) seeking recall of the complainant for cross-examination as well as the orders dated 23rd November, 2019 and 7th March, 2020 of 'no cross'.

4. Learned Counsel for the petitioners submits that there was no intention on the part of the petitioners to delay the cross examination or the trial. He submits that the father of the defence Counsel had expired on 14th November, 2019 and that the Advocate could not remain present because of the same, when the order of 'no cross' was passed on 23rd November, 2019. Learned Counsel for the petitioners submits that in the interest of justice, the impugned orders be quashed and set aside and the petitioners be permitted to cross examine the complainant.

5. Learned Counsel for the respondent No.1 vehemently opposes the petition. He submits that no indulgence be shown to the petitioners inasmuch as, the petitioners have been delaying and protracting the conduct of the trial since 2019. He submits that record will show that the petitioners have been seeking adjournments on the premise of settling the

dispute amicably and by filing pursis to that effect. He submits that two cheques of Rs.65,00,000/- each were even handed over by the petitioners to the respondent No.1, however both the cheques were dishonored. He submits that the conduct of the petitioners disentitles them from any indulgence and prays that the aforesaid petition be dismissed. At this stage, learned Counsel for the petitioners states that the petitioners were ready to pay the amounts and honour the cheques, however, as a Receiver was appointed, the payment would not be completed.

6. Perused the papers. The respondent No.1 is the original complainant who has filed a complaint in the Court of the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai, alleging offences punishable under Sections 138 read with 141 of the Negotiable Instruments Act. It appears that the cheques in question which were dishonored, were issued for a total sum of Rs. 1,60,00,000/- by the petitioners in favour of the respondent No.1. It appears that the petitioners(accused) appeared before the Trial Court and after their plea was recorded, the trial commenced. The respondent No.1 examined himself in August, 2019. Thereafter, the cross examination of the respondent No.1(complainant) commenced and went on for two dates. On the third date i.e. on 23rd November, 2019, when the matter was kept for conducting the cross

examination of the respondent No.1, as the Advocate for the petitioner Nos.1 to 5 was absent, the learned Trial Judge passed the following order;

“The case is for cross. Advocate for the accused absent. Hence, no cross order passed.”

7. The said order is dated 23rd November, 2019. Thereafter, again the matter came up on 7th March, 2020. It appears from the order which is at page No.37 of the petition that on 7th March, 2020, as the Advocate for the petitioner/accused No.6 failed to cross examine the complainant, again an order of ‘no cross’ was passed as against the petitioner/accused No.6. Both these orders i.e. order dated 23rd November, 2019 and 7th March, 2020 are impugned in this petition.

8. Thereafter, the petitioners filed an application (Exh.64) seeking recall of the respondent No.1/complainant for cross examination. The reason given for not remaining present on 23rd November, 2019 was that the father of the defence Counsel had expired on 14th November, 2019 and the last rites were performed on 18th November, 2019. It appears that thereafter, the petitioners assured to settle the matter amicably on or before 14th January, 2020. Infact, on 1st November, 2019, petitioner No.3 handed over cheques to the complainant for Rs.50,00,000/- and on 26th December, 2019, the petitioners filed pursis for not depositing the said cheque in the

bank as the petitioners had not received the expected amount. Again, on 14th January, 2020, pursis was filed by the petitioner No.3 - accused and two cheques of Rs.65,00,000/- were handed over to the respondent no.1/complainant. It is not in dispute that both the said cheques were dishonored. Again on 11th February, 2020, one more pursis was filed by the petitioners stating therein that they were unable to arrange the said amount. The conduct of the petitioner needs to be deprecated of delaying the trial on the premise of amicably settling the matter. Infact, no infirmity can be found in the impugned orders dated 23rd November, 2019, 7th March, 2020 and 12th January, 2021 passed by the Trial Court.

9. At this stage, learned Counsel for the petitioner states that the petitioner is ready to pay costs, as this Court may so direct and also assures that the petitioners will proceed with the trial expeditiously and that they will not seek any adjournments.

10. Only by way of indulgence and having regard to the assurance given by the learned Counsel for the petitioners on instructions that they are ready to pay costs as may be directed by this Court and that they will not seek any adjournment in the Trial Court and that they will assist the Court in the expeditious disposal of the trial, the application is allowed on

the following terms;

ORDER

(i) The impugned order dated 12th January, 2021 passed by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai below Exh.64 is quashed and set aside. Even the orders dated 23rd November, 2019 and 7th March, 2020 of 'no cross' are quashed and set aside.

(ii) The aforesaid order is subject to the petitioners paying cost of Rs.75,000/- to the Bar Council of Maharashtra and Goa Covid-19 Fund, within 10 days from today.

(iii) The proceeding in C.C. No. 1282/SS/2018 before the Trial Court is expedited. The learned Judge to conclude the said case as expeditiously as possible and in any event, within three months from the date of receipt of this order.

11. Rule is made absolute on the aforesaid terms and is disposed of accordingly.

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

REVATI MOHITE DERE, J.