

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL WRIT PETITION NO. 59 OF 2021.**

AJJU C. S. SINDOLLI
VS
UDAY KAMBLI

...Petitioner.
...Respondent.

Mr. E. Usapkar, Advocate for the petitioner.

Mr. Prasad Sutar and Mr. Mayuresh Kambli, Advocates for the respondent.

CORAM: SANDEEP K. SHINDE, J.
Reserved on : 15th June, 2022.
Pronounced on: 16th June, 2022

ORDER:

1. This petition under Article 227 of the Constitution of India questions the legality and correctness of the order dated 25.10.2021, by which the learned Judicial Magistrate First Class 'B' Court Panaji dismissed the application moved by the petitioner accused purportedly under Section 145(2) of the Negotiable Instruments Act.

2. The petitioner – accused, in Criminal Case No.OA/222/2018/B filed by the respondent under Section 138 of the Negotiable Instruments Act, answered the substance of accusation and pleaded not guilty. After which he moved an application for recalling the

complainant and his witnesses to cross examine them. The learned trial Court rejected the application. Thus this petition.

3. Heard learned Counsel for the parties.

4. In the case of *Indian Bank Associations and others Vs Union of India and ors. (2014)5 SCC 590*, the Apex Court has held that affidavit and the documents filed by the complainant along with the complaint for taking cognizance of the offence are good enough to read in evidence at both the stages i.e pre-summoning stage and post summoning stage. In other words there is no necessity to recall and re-examine the complainant after summoning the accused unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of the Negotiable Instruments Act Suo Motu by the Court. Although the accused has been given rights to seek recall of the complainant and his witnesses for their cross examination, however, in the application the accused is required to disclose a specific reasons for contesting the claim of the complainant. In the case of *Meters and Instruments Pvt. Ltd and anr. Vs Kanchan Mehta, (2018)1 SCC 560*, the Apex Court has held that if the accused

wants to contest the case, he must be required to disclose specific defence for such contest and for this purpose it is open to the accused to ask specific questions to the accused at that stage.

5. Coming to the present case, an application moved by the petitioner accused purportedly under Section 145(2) of the Negotiable Instruments Act does not disclose specific defence for such contest. In that view of the matter, the learned Trial Court rejected the application, which calls for no interference.

6. Th learned Counsel appearing for the petitioner argued in fact the statutory notice was not served on the accused and that itself is a defence of the accused. However, inadvertently this defence was not disclosed in the application moved by accused. It is submitted that in the interest of justice the applicant may be permitted to apply afresh to seek recall of the complainant and his witnesses for their cross examination.

7. The petition is opposed by the learned Counsel appearing for the respondent/original complainant.

8. I have considered the rival contentions.

9. In consideration of the facts of the case and in my considered

view ends of justice would meet if the petitioner accused is granted liberty to move an application afresh upon disclosing the specific defence for such contest, subject to cost of Rs.25,000/- which shall be paid to the complainant.

10. Thus the following Order:

- (i) The petition is partly allowed.
- (ii) The impugned order date 25.10.2021 rejecting the application below Exh.D-25 in Criminal case No. OA 222/2018/B pending on the file of JMFC 'B' Court Panaji is set aside.
- (iii) Liberty is granted to the petitioner to move afresh application disclosing specific defence subject to cost of Rs.25,000/- to be paid to the complainant within two weeks from the date of uploading this order on the website.
- (iv) If such an application is moved by the petitioner/accused the learned Magistrate shall decide the same in accordance with law without being influenced by the impugned order.

11. Petition is disposed of in the above terms.

SANDEEP K. SHINDE,J.