

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 49 OF 2023**

Kapil Vishnu Sardesai

... Petitioner

Versus

VPK Urban Co-operative

...Respondents

Mr. Shubham Priolkar, Advocate for the Petitioner.

Mr. Jatin Ramaiya, Advocate for the Respondent.

CORAM: M. S. KARNIK, J
DATED: 4th JULY 2023

ORAL ORDER

1. Heard learned counsel Mr. Priolkar for the petitioner and the learned counsel Mr. Ramaiya for the respondents..

2. The challenge in this petition is to an order dated 26.12.2022 passed by the trial Court disposing of an application filed by the accused under section 145(2) of the Negotiable Instruments Act, 1881, seeking leave to cross examine the complainant. The application was rejected.

3. It has been observed by the trial Court in the order dated 26.12.2022 in paragraph 6 that it is not even the case of the accused that the loan has been repaid by him or that there being an altered

situation due to which there was understanding between the parties not to present the said case. It is in this light of the matter that the trial Court observed that the ground raised by the accused has no substance. Further in paragraph 9, the reasons are stated thus :

“9. In the case at hand, I find that the defence as set out by the accused cannot be considered as the probable defence. Further, the accused had also not set out such defence at the first instance by replying the legal notice and in fact, the accused has clearly admitted his liability in the reply given to the legal notice. In the backdrop of the above discussion, I pass the following:The application is rejected.”

4. In the application from paragraphs 4 to 6 onwards, the applicant has given the reasons why such a cross examination of the complainant is necessary. In my opinion, the grounds mentioned in the application sufficiently complies with the requirement as laid down by the Supreme Court in the case of **Meters and Instruments Pvt. Ltd. & anr. vs. Kanchan Mehta**¹. Further more, the learned counsel for the applicant, on instructions, submitted that without prejudice to the rights and contentions, the petitioner is willing to deposit a sum of ₹ 60,000/- with the society on or before 15.07.2023. Statement accepted. Such deposit shall abide by the final decision of the matter.

¹ (2018) 1 SCC 560

5. In case the petitioner succeeds, the said amount will be refunded by the respondent without any delay. This is without prejudice to the respondents' right to claim interim compensation.

6. The impugned order is set aside. The application exhibit D-12 is allowed. The petitioner to cooperate with the trial Court in the expeditious disposal of the proceedings and shall not seek unnecessary adjournments.

7. Disposed of.

M. S. KARNIK, J

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