

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.72 OF 2023

Prakash B. Naik.

... Petitioner.

Versus

Visionaries Urban Co-Operative
Credit Society Ltd and 3 Others.

.... Respondents.

Ms Marul Naik Gaonkar, Advocate for the Petitioner.

**Mr Sahil Sardessai, Advocate for the Respondents No.3
and 4.**

**CORAM:
DATED:**

**PRAKASH D. NAIK, J
23rd OCTOBER 2023**

ORDER:

1. The petitioner is the original complainant in Criminal Case No.112/OA/Ni/2020/E. The petition is filed challenging order dated 21.06.2023 passed below Exhibit-36 filed by respondent no.3 and order dated 21.06.2023 passed below Exhibit -42 filed by respondent no.4.

2. The accused no. 1 is a Cooperative Credit Society. The complainant opened a pigmy account with accused no.1. The cheque dated 30.11.2019 was issued by the accused in discharge of liability. The cheque was for an amount of Rs.91,057/-. It was dishonoured with remarks "Payment stopped by drawer". Demand notice was sent to the accused. Complaint was filed.

3. The complainant filed Affidavit of evidence.

4. Pursuant to affidavit of evidence the respondents no.3 and 4 filed applications under Section 145(2) of the Negotiable Instruments Act. The application was opposed by the complainant by filing reply. The learned Magistrate vide order dated 21.06.2023 passed below Exhibit-36 allowed the application preferred by the accused no.3 and leave was granted to the accused to cross-examine the complainant and his witnesses. Vide order dated 21.06.2023 passed below Exhibit-42 the learned Magistrate allowed the application preferred by accused no.4 and leave was granted to the accused to cross-examine the complainant.

5. Learned advocate for the petitioner submitted that the application under Section 145(2) was preferred belatedly. It was filed after a period of nine months from the date of appearance. The defence of the accused was sham. The defence was urged for the sake of defence. The proceedings under Section 138 of Negotiable Instruments Act are of summary nature. No ground was made out for granting leave to cross-examine the complainant. The application preferred by the accused was opposed by the complainant by filing reply. The objection was not considered by the Court in proper perspectives. The facts pleaded in the application under Section 145(2) of Negotiable Instruments Act were contradictory to each other. The applicant did not spell out specific defence. The accused had not denied the signature. The accused are delaying the proceedings. The accused can lead evidence by defence witnesses. The accused

were involved in swindling the hard earned money of the victims. The application ought not to have been allowed by the trial Court. The trial has not considered the ground considered by this Court in the case of **Rakesh Singh v/s. Anil Madanmohan Gulati**¹ dated 09.05.2023 Criminal Writ Petition No.34 of 2023 in proper perspectives. Reliance is placed on the decision in the case of **Ritesh Patil v/s. Dhanvantari Urban Co-op. Credit Society Ltd**².

6. Learned advocate for the respondent submitted that there is no illegality in the impugned order. The cheque was issued by the bank. The accused must be permitted to cross-examine the complainant. The accused cannot be deprived of right to cross-examine the complainant.

7. Respondent No.3 in her application under Section 145(2) of Negotiable Instruments Act has contended that the complaint was false. The accused no.3 was never the drawer of the cheque. The debt is not legally enforceable against the accused. The cheque was issued by accused no.1 who was the drawer of the cheque. The accused no.3 was the then signatory of accused no.1. The cheque was not issued by her in her personal capacity. The accused no.1 is a Cooperative Credit Society with limited liability. The accused no.3 is not personally liable. Administrator was appointed by the Registrar of Cooperative Societies. The accused no.3 is disputing the documents produced by the complainant. The accused no.3 desires to cross-examine

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2 2013 SCC OnLine Bom 108

the complainant. While allowing the application preferred by accused no.3, it was observed that accused no.3 has specifically stated that the disputed cheque was not issued by her in personal capacity. Accused had taken some defence. The accused no.4 in his application under Section 145(2) of Negotiable Instruments Act had contended that the said accused does not owe any money to complainant.

8. In the case of **Rakesh Singh vs. Anil Madanmohan Gulati & anr.** (supra), this Court has dealt with the issue relating to application under Section 145(2) of the N. I. Act. Reference was made to several decisions of the Apex Court as well as this Court. It was observed that it may be that the accused has an opportunity to lead defence evidence and rebut presumption, if any. However, that does not mean that the valuable right of the accused to cross-examine the Complainant which he is entitled under Section 145(2) of the N.I. Act, can be lightly brushed aside. It was also observed that the accused has a right to fair trial. Once it is recognised that the accused has absolute and unqualified right to have the complainant and any or all of his witnesses summoned for cross-examination, the applicant cannot be deprived of such a right. The Supreme Court in **Meters and Instruments Private Limited & anr. vs. Kanchan Mehta**³, has not at all diluted the proposition laid down in **Mandvi Co-op Bank Ltd vs. Nimesh B. Thakore**⁴, that the accused is fully protected and under sub-section (2) of Section 145 of the N.I. Act, he has absolute and

³ (2018) 1 SCC 560

⁴ (2010) 3 SCC 83

unqualified right to have the Complainant and any or all of his witnesses summoned for cross-examination. The Supreme Court has not curtailed the right of the accused to have the Complainant summoned for cross-examination.

9. In the case of **Mandvi Co-op Bank Ltd. vs. Nimesh B. Thakore** (supra), the Supreme Court had considered the scope of Section 145 of the N. I. Act. It was observed that the accused is fully protected under sub -section (2) of Section 145, he has absolute and unqualified right to have the complainant and any or all of his witnesses summoned for cross examination. The affidavit of the person summoned is in nature of examination in chief, hence on being summoned on the application made by the accused, the deponent of the affidavit, the Complainant or any of his witnesses can only be subjected to cross-examination as to the facts stated in the affidavit.

10. In **Meters and Instruments Private Limited & anr. vs. Kanchan Mehta** (supra), the Supreme Court was considering the issue as regards the rejection of the prayer by the High Court for compounding offence under Section 138 of N. I. Act on payment of cheque amount. How proceedings can be regulated, where the accused is willing to deposit the cheque amount and whether proceedings can be closed. In the context of issues under consideration, it was observed that the accused who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage.

11. In the light of observation of Supreme Court in the case of **Mandvi Co-op Bank Ltd. vs. Nimesh B. Thakore** (supra), it was observed that the accused is protected under Section 145(2) of N. I. Act to have Complainant and his witnesses cross-examined.

12. Hence, the petition is devoid of merits. There is no infirmity in the impugned orders.

ORDER

(i) Criminal Writ Petition is dismissed and disposed of.

(PRAKASH D. NAIK, J.)

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
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