

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 97 OF 2023**

Suresh Kashinath Parab ... Petitioner
Versus
V. P. K. Urban Cooperative Credit Society
Ltd. Rep. By Pundalik R. Palyekar & anr. ... Respondents

Mr. Sagar Dhargalkar, Advocate for the Petitioner.
Mr. Jatin Ramaiya, Advocate for the Respondent no.1.
Mr. Somnath Karpe, Additional Public Prosecutor for
Respondent no.2.

CORAM: PRAKASH D. NAIK, J
DATED: 6th NOVEMBER, 2023

ORAL ORDER

1. The Petitioner has challenged Order dated 29.04.2023 passed by Judicial Magistrate First Class at Ponda, 'C' Court, in Criminal Case no. 117/OA/NIA/2022/C, whereby an application preferred by the Petitioner under Section 145(2) of the Negotiable Instruments Act, 1881, has been rejected.

2. The Petitioner is tried for an offence under Section 138 of the N. I. Act. The Respondent is the Complainant. The complaint was filed alleging that the accused had issued cheque bearing no. 219530 dated 17.12.2021, towards part payment of the loan instalments. The cheque was dishonoured on 18.12.2021 for the reason 'refer to drawer'. Demand notice dated 04.01.2022 was forwarded to the

accused. It was received by the accused. Payment was not made. Complaint was filed.

3. The Complainant tendered affidavit of evidence and the proceedings were adjourned for cross examination by the defence. The Petitioner filed application under Section 145(2) of the N. I. Act on 05.01.2022 seeking leave to cross examine the Complainant. The application was rejected vide Order dated 29.04.2023.

4. Learned Advocate for the Petitioner, Mr. Sagar Dhargalkar, submitted that the impugned order is cryptic and without reasons. The accused cannot be deprived the cross examination of the Complainant on the grounds stipulated in the impugned Order. Reply to notice is not a *sine qua non* for seeking leave to cross examine the Complainant. Reliance is placed on the decision of this Court in the case of **Rakesh Singh vs. Anil Madanmohan Gulati & anr.**¹

5. Learned Advocate for the Respondent-Complainant submitted that the complaint involves huge amount. The proceedings are pending since long. Application under Section 145(2) was filed belatedly. There is no infirmity in the impugned Order. Petitioner should be directed to deposit the amount in respect to the cheque.

¹ WPCR. Nos. 34 & 35 of 2023 decided on 09.05.2023

6. Learned Advocate for the Petitioner pointed out that the Petitioner had appeared before the trial Court on 29.06.2022. He furnished surety on 09.11.2022. The application under Section 145(2) of N. I. Act was filed on 05.01.2023 and the said application was rejected on 29.04.2023.

7. Section 145(2) of the N. I. Act provides that an application can be moved by the accused for recalling the Complainant for the purpose of cross examination. This Court in the case of **Rakesh Singh vs. Anil Madanmohan Gulati** (supra), has observed that the accused has a right of fair trial. Once it is recognized that the accused has absolute and unqualified right to have the Complainant and/or any other witness examined for cross, the accused cannot be deprived of such right. The scope of Section 145(2) of the N. I. Act was dealt with by the Apex Court in the case of **Mandvi Co-operative Bank Limited vs. Nimesh B. Thakore**². The order passed by the learned Magistrate and the reasons assigned for rejection of the said application is beyond the scope of Section 145(2) of N. I. Act. Hence, the said Order is required to be set aside. The Petitioner shall not delay the cross examination and shall proceed with the cross examination on the next date of hearing. The Respondent is at liberty to refer appropriate application as far as the

² (2010) 3 SCC 83

provisions of law for seeking directions to deposit the amount towards interim compensation.

ORDER

(i) Criminal Writ Petition no. 97 of 2023 is allowed.

(ii) The impugned Order dated 29.04.2023 passed by Judicial Magistrate First Class at Ponda, 'C' Court, in Criminal Case no. 117/OA/NIA/2022/C, is set aside.

(iii) The Complainant be recalled for the purpose of cross examination by the Petitioner-accused.

(iv) The Petitioner shall not delay the proceedings and proceed with the cross examination.

(v) Criminal Writ Petition stands disposed of.

PRAKASH D. NAIK, J