



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 CRIMINAL WRIT PETITION NO. 1476 OF 2024

SHANTANU BUBURAO SURYAKAR

VERSUS

AMBADAS POPAT LOKHANDE

...

Advocate for the Petitioner : Mr. S. V. Suryawanshi

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 16.10.2024

PER COURT :

1. Heard Mr. S. V. Suryawanshi, the learned counsel for the Petitioner at length.

2. The grievance of the Petitioner is that, he has filed a complaint bearing S.C.C. No. 6399/2022 under Section 138 of the Negotiable Instruments Act, 1881 alleging that the Respondent-Accused had issued a cheque in his favour to the sum of Rs. 6,50,000/- on 03.03.2022, drawn on Axis Bank, Branch Shrirampur, Tq. Shrirampur, District Ahmednagar. However, the said cheque was dishonored on account of 'Funds Insufficient'. Accordingly, the mandatory notice was issued, but the Respondent (accused) did not comply with the notice. Therefore, the Respondent (accused) has committed an offence under Section 138 of the Negotiable Instruments Act.

3. On perusal of record, it appears that on 01.07.2022, the Petitioner (complainant) filed evidence affidavit Exhibit 14. On 11.10.2022 further examination-in-chief of the Petitioner was recorded. However, subsequently due to territorial jurisdiction, said complaint was returned and was presented before the learned Judicial Magistrate First Class, Newasa. But again it was presented before the learned Chief Judicial Magistrate, Ahmednagar which is re-numbered as S.C.C. No. 6399/2022.

4. According to the Petitioner, the Respondent (accused) did not appear in the matter and did not participate in the trial. Therefore, on 20.01.2023, the learned trial Court passed the order and proceeded the trial without cross-examination of the Respondent (accused), so also, on 21.01.2023, the warrant was issued against the Respondent (accused). Subsequently, the accused appeared in the matter and cancelled the warrant and filed Exhibit 42 on 04.02.2023 with prayer for setting aside the order of no cross. On 04.02.2023, the trial was adjourned to 23.02.2023, on which date, the learned counsel for the Respondent (accused) did not argue on the application Exhibit 42. The Petitioner filed pursis Exhibit 43 and closed the evidence, however, due

to possibility shown by both the parties about settlement the matter was referred to the mediation.

5. On 14.03.2023, the Petitioner (complainant) and Respondent (accused) entered into settlement pursis as per the terms and conditions prescribed therein. However, said settlement was not futile. Therefore, again trial of the matter was opened and matter was fixed on 26.04.2023 on which the date the warrant was issued against the Respondent (accused). So also, the trial was kept in abeyance for want of service of warrant. Ultimately, on 29.12.2023 the Respondent (accused) was produced before the Court in execution of warrant and subsequently he was again released on bail. Therefore, the Respondent (accused) filed an application Exhibit 42 for setting aside of no cross and permission to further cross-examine the witness.

6. On 29.07.2024, the learned trial Court passed the impugned order and granted said application, considering the previous instances of compromise and granted permission to the Respondent (accused) to cross-examine the Petitioner (complainant) subject to costs of payment of Rs. 2,000/-.

7. Taking into consideration and the concept of fair trial and providing proper and sufficient opportunity, the learned trial Court passed the impugned order and permitted the Respondent (accused) to cross-examine the Petitioner (complainant) which does not appear illegal, bad in law and no interference is required at the hands of this Court to disturb the findings of the learned trial Court. Hence, this Petition is dismissed.

(Y. G. KHOBRADE, J.)

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