

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 113 OF 2022

Shree Swami Samarth Section Construction
and another ... Petitioners

Versus

Vimala Jayant Maru through
Jayant Surji Maru and another ... Respondents

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Mr. Prablin Singh Abrol alongwith Mr. Manohar Manodavkar for the
Petitioners.

Mr. Jatin Karia (Shah) alongwith Ms. Snehankita Munj, Ms. Shraddha
Kamble and Ms. Preeti S.G. for Respondent No.1.

Mr. Y.M. Nakhwa, APP for the State.

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**CORAM : PRAKASH D. NAIK &
N.R. BORKAR, JJ.**

DATED : 20th FEBRUARY 2024

P.C. :-

. The Petitioners are tried for the offence under Section 138
of the Negotiable Instruments Act.

2. The complaint is filed by the Respondent No.1. Process was
issued vide order dated 12th February 2018. Evidence of complainant
was adduced. The complainant was cross-examined. The statement of
the accused is recorded under Section 313, Cr.P.C. The case is argued
and the same is now listed for Judgment.

3. Learned Counsel for the Petitioners submits that he is
seeking relief in this Petition in terms of prayer clause (b) i.e. to quash
entire proceedings in C.C. No.344/SS/2018 pending at 20th Magistrate
Court, Sewree, Mumbai.

3. Learned Counsel for the Petitioners submits that the Power of Attorney dated 20th December 2017 relied upon by the complainant is defective. It was not produced at the time of filing of the complaint. After the evidence is over, the complainant filed an application under Section 311 of Cr.P.C. The learned Magistrate allowed the application vide order 1st August 2019 and the complainant is directed to produce new power of attorney. The order passed by the Magistrate was challenged in the Sessions Court by preferring Revision Application. The said application has been dismissed by the Sessions Court vide order dated 9th March 2020. It is submitted that in view of the defective power of attorney, the entire proceedings should be quashed.

4. Learned Advocate for the Respondent/complainant submitted that the orders dated 1st August 2019 and 9th March 2020 were subjected to challenge vide prayer clause (a) of this Petition. The said prayer has been rejected by this Court vide order dated 5th May 2022. The other prayer of the Petitioner is for quashing proceedings. However, the entire Petition does not raise any grounds for quashing the proceedings. The case has reached last stage. After recording the evidence, the statement of the accused was recorded under Section 313 of Cr.P.C. The order under Section 311 of Cr.P.C. was passed by the trial Court on 1st August 2019. Thereafter, the Sessions Court has rejected the Revision Application preferred by the Petitioners on 9th March 2020. Arguments are heard and the case is now due for Judgment.

5. Vide order dated 5th May 2022, this Court had passed the following order :

1. Heard learned counsel for the petitioner. Perusal of the petition shows that the petitioner had made two principal prayers i.e. prayers 'a and b' read thus.

a) That this Hon'ble court may be pleased to set aside the impugned order dated 09/03/2020 passed by Session Court in Revision No. 1141 of 2019 and order dated 01/08/2019 passed by Ld. Magistrate Court, 20th Court at Mazgaon, Mumbai in C.C. No.344/SS/2018 allowing the complainant to file New Power of Attorney on record.

b) That this Hon'ble Court may be pleased to quash the entire proceeding in the C.C. No. 344/SS/2018 pending at 20th Magistrate Court, Court, Sewree, Mumbai.

2. Prayer 'c' is an interim prayer. In our opinion, by exercising our powers under section 482 of Code of Criminal Procedure or even the powers of this Court under Article 226 prayer clause 'a', the petition cannot be entertained. The petition can only be entertained to consider prayer clause 'b' which is seeking quashment of the proceedings. Prayer for interim relief is rejected. Accordingly, we are issuing notice to the respondents to consider the prayer clause 'b' only.

3. Issue notice to the Respondents, making the same returnable on **11th August, 2022**.

4. Learned PP waives notice for Respondent –State.

5. Learned Counsel for Petitioner is permitted to serve the private Respondent No.1 and 2, by way of any legally permissible mode of service, apart from Court service and place on record service affidavit before next date.”

6. Subsequently the matter was listed before the learned Single Judge and on 19th August 2023 this Court has passed the following order:

“1. In this writ petition there is an order of a division bench of this court dated 05/05/2022 making certain observations. Therefore, propriety demands that the matter be placed before the division bench.

2. Learned counsel for the Respondents i.e. the original

complainant made a grievance that the prayer for interim relief was specifically rejected which is reflected in paragraph-2 of the order dated 05/05/2022 and the trial is not proceeding before the Trial Court because the accused are taking adjournments.

3. Considering this situation, the Registry to take steps to place this matter before the Division Bench for further orders.

4. It is clarified and emphasized that the Division Bench had specifically refused the interim relief, therefore, the Trial Court is duty bound to give effect to the order passed by the Division Bench.”

7. Vide order dated 5th May 2022, this Court had rejected the prayer clause (a) which includes the challenge to the orders dated 1st August 2019 and 9th March 2020.

8. Learned Counsel for the Petitioners contends that the first power of attorney is defective and the second power of attorney should not have been allowed to be taken on record.

9. As stated above, both the said orders were subject matter of prayer clause (a) to the Petition which has been rejected. Apart from that, after recording the evidence, the statement of the accused is recorded under Section 313, Cr.P.C. Arguments of both the sides were heard and the case is now due for delivering Judgment. There is no ground for quashing proceedings. Considering the aforesaid facts, we do not find any reason to interfere in the impugned proceedings.

10. Writ Petition stands dismissed.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)