



Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.35 OF 2025

Sonal Santosh Mazgaonkar,
Aged about 42 years, Indian National,
Residing at H, No. 104,
Panditwada, Ponda Goa, 403401.

... Petitioner

Versus

1) VPK Urban Co-operative
Credit Society Ltd,
Head Office at "VPK Bhavan",
Mardol, Goa
As represented by
Mr. Siddesh Thanu Madkaikar

2) State of Goa,
Through The Public Prosecutor,
High Court Building,
Porvorim Goa

...Respondents

Mr. Prashant Agrawal, Advocate for the Petitioner.

Mr. Jatin Ramaiya, Advocate for Respondent No.1.

Mr. Gaurish Nagvenkar, Advocate for Respondent No.2.

CORAM : VALMIKI MENEZES, J.

DATED : 11TH JULY, 2025.

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.
2. Heard learned Counsel for the parties.

3. Rule. Rule made returnable forthwith with the consent of the parties.

4. This Criminal Writ Petition has been filed by the Petitioner impugning order dated 11.11.2024 passed by the Judicial Magistrate First Class, Ponda in a case bearing Criminal Case No. 371/OA/NIA/2018/A, closing the opportunity for cross examination of witness PW-1. Subsequent application dated 11.11.2024 to recall order dated 11.11.2024 closing cross examination was filed by the Petitioner, which was rejected on 07.02.2025 on the grounds that the Magistrate lacked jurisdiction to recall its own order. This is the second order impugned in this petition.

5. The facts relevant for the disposal of this petition are as follows:

- (i) Respondent No. 1 is a registered Urban Co-operative Credit Society engaged in the business of accepting deposits and advancing loans to its members. The said society claimed it had advanced a loan of Rs. 22,00,000/- to the Petitioner, a member of the said society, who executed a loan agreement to that effect.
- (ii) It was the Respondent's case that due to the Petitioner's failure to repay the loan amount, and after compliance with the notice under Section 138 of the N.I. Act, it filed a Complaint before JMFC, Ponda which came to be registered as Criminal Case No. 371/OA/NIA/2018/A.

- (iii) After verification of the complaint and process having been issued and summons received by the Petitioner, she moved an Application under Section 145 of the Negotiable Instruments Act, seeking permission to cross-examine Respondent No. 1, which was granted.
- (iv) On 13.09.2024, part examination in chief of Respondent No. 1 came to be recorded in the presence of the Petitioner and her Advocate. On the subsequent date i.e. 11.10.2024, the Petitioner sought time to engage a new Counsel to represent her in the said proceedings and the matter came to be adjourned for continuation of chief and cross examination.
- (v) On 11.11.2024, the Petitioner was present along with her Advocate, who filed Wakalatnama and sought time for further evidence. However, vide Roznama Order dated 11.11.2024, the opportunity of the Petitioner to Cross Examine Respondent No. 1 was closed and the matter was further kept for Statement of the Petitioner under Section 313 of Cr.P.C.
- (vi) When the said Roznama Order came to the knowledge of the Advocate for the Petitioner, an Application seeking recall of the said Roznama Order and opportunity to examine the witness on the very same day. The Judge obtained the say of Respondent No.1 on the said application and vide impugned Roznama Or-

der dated 07.02.2025, rejected the Application, dismissing the same as not maintainable.

- (vii) Aggrieved by the impugned order dated 07.02.2025, the Petitioner filed a Revision Application before the Sessions Court, Panaji which came to be registered as Criminal Revision Application No. 25/2025 and was allotted to the Additional Sessions Judge at Ponda. The said Revision Application was dismissed by the Additional Sessions Judge vide order dated 19.03.2025, finding no perversity in the impugned order dated 07.02.2025.

6. The short point for my consideration is whether this is a fit case to exercise supervisory jurisdiction under Article 227 of the Constitution of India, to set aside orders dated 11.11.2024 and 07.02.2025, and the revisional order dated 19.03.2025.

7. The revisional order dated 19.03.2025 has correctly held that the Magistrate lacks jurisdiction to recall its own order as no such power is vested in the Magistrate under the Code of Criminal Procedure. However, the Sessions Court has not even looked into the reasons for seeking an adjournment of the hearing on 11.11.2024 and instead of addressing itself to the merits of the application and the legality and whether the order dated 11.11.2024, closing evidence was justified, has dismissed the revision application. This is clearly a case of refusal to exercise revisional jurisdiction vested in the Sessions Court to examine the correctness, legality or propriety of any order that may be passed by a Magistrate during the course of the

trial. The Sessions Court, under Section 399 is vested with the same powers of revision under Section 397 of the Code, as is the High Court and can examine whether any sentence or order, recorded or passed in a criminal proceeding and examined the regularity of such proceedings of an inferior court. Since the Sessions Court has failed to exercise this jurisdiction and has dismissed the criminal revision application on a preliminary point, the order of the Sessions Court is required to be quashed and set aside.

8. Considering the nature of the orders challenged herein, though in normal course I would be justified in remanding the matter back to the Sessions Court for deciding the revision application on merits, I would proceed to examine the legality and propriety of the order dated 11.11.2024 on the basis of averments made in the application at Exhibit D-54 before the Trial Court.

9. Though it might be true that the Petitioner has failed to appear on several occasions for a long duration of time prior to the examination in chief of the Respondent Complainant being recorded, the fact remains that the Petitioner was granted leave to cross examine the Complainant in terms of Sub-Section 2 of Section 145 N.I. Act. The opportunity to cross examine was in fact availed of when the Complainant was examined first on 13.09.2024 and the matter then was set down for cross examination on 11.10.2024, on which date the Petitioner sought an adjournment to change her Advocate, for which time was granted and the matter was adjourned to 11.11.2024.

10. On 11.11.2024, when the new Advocate filed his Wakalatnama to represent the Accused, and sought time to cross examine the

Complainant, the application came to be rejected with a one line Roznama order stating that inspite of opportunities, the Advocate for the Accused failed to cross-examine the Complainant on that date. If one peruses the Roznama of 11.10.2024 , the Accused appeared in person and sought time to engage the services of a new Lawyer and was granted time on that ground. It is expected that sufficient opportunity should be given to the Accused to engage an Advocate and to cross-examine the Complainant adequately, once leave is granted to defend the case under Section 138 of Negotiable Instruments Act, 1881. In my opinion, the learned Magistrate has had a very narrow approach to the application for grant of an adjournment, purely on the ground that a new Advocate was engaged on that day. If the impugned order dated 11.11.2024 is allowed to stand, it would work serious injustice and prejudice to the accused. Consequently, the impugned order dated 11.11.2024 in my opinion is not justified and is therefore required to be quashed and set aside. The second order dated 07.02.2025 refusing to recall the order dated 11.11.2024 is correctly passed, since the Magistrate lacks jurisdiction to recall its own order under the Code.

11. This however does not mean that the Petitioner can take the liberty to protract the trial and delay the same. The next date of hearing, which was otherwise listed for recording the Section 313 statement of the Accused has been now listed on 08.08.2025. The Petitioner/Accused shall complete the cross-examination of the Complainant on 08.08.2025 or any other adjourned date that the learned Magistrate sets down for that purpose. Now that the Petitioner/Accused has been granted an opportunity to complete the

cross-examination, the learned Magistrate is requested to complete the trial as expeditiously as possible. The Petitioner shall co-operate at all stages to complete the trial in an expeditious manner.

12. For the reasons stated above, the impugned order dated 11.11.2024 is quashed and set aside. The Petitioner/Accused shall be permitted to cross-examine the Complainant. No order as to costs.

13. Rule is made absolute in the above terms.

VALMIKI MENEZES, J.