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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 22 OF 2025

EDWIN DIAS THR. POA HOLDER
KRISHNA ARJUN SHINDE **… Petitioner**

Versus

GANGA DABOLKAR **…Respondent**

Mr. Galileo Francisco Teles with Ms. Rifad Ballari, *Advocate for the Petitioner.*

Mr. Ressano Hector Noronha*, Advocate for Respondent.*

CORAM : VALMIKI MENEZES, J.

DATED : 17TH JUNE, 2025.

ORAL ORDER:

1. The Petitioner raises a challenge to the order of 27.07.2024, passed by the Judicial Magistrate First Class, 'A' Court at Panaji in Criminal Case No. OA/750/2017/A by which rejects the Petitioner's (original complainant's) application for recall of a witness, invoking powers under Section 311 Cr.P.C.

2. It is the case of the Petitioner that he filed a complaint under Section 138 of the Negotiable Instruments Act for the

offence of dishonour of a cheque of Rs. 17,00,000/- (Rupees Seventeen Lakhs only) issued by the Respondent (Accused in the complaint). It is the complainant's case that when the cheque was presented to his Bank, he was issued a Return Memo from the Banker of the Respondent stating that the cheque was dishonoured for the reason "Insufficient Funds" in the account of the Respondent. Notice was issued to the Respondent under Section 138, to which no reply was filed.

3. It is further the Petitioner's case that after evidence of the Petitioner was completed, the Accused examined witness (Mr. Hygino Toscano) who claimed to be Branch Manager of Bank of India, Campal branch, a branch which was different from the branch in which the Accused maintained his account, and on which the cheque was drawn. It is further the Petitioner's case that this witness (DW2) had deposed that on comparison of the signature on the cheque with the signature on the Bank Specimen Signature card, in his opinion, the signatures differed. The Petitioner submits that certain questions were to be asked in cross-examination, which inadvertently were omitted at the relevant time, for which reason, he filed an application invoking powers of a Magistrate under Section 311 of Cr.P.C., seeking recall of the witness at the stage of final arguments of the proceedings.

4. The Petitioner submits that there were sufficient grounds made out in the application stating the recall of the witness, the main reason being that the witness was incompetent to depose, both on the comparison of the signatures and that the witness was not knowing the Bank Manager of the branch where the Accused had his account at the relevant time i.e. the date on which the cheque was dishonoured.

5. I have considered the submissions of the learned Advocates for the parties. The impugned order rejects the application on two grounds. The first ground was that the application was devoid of the reasons and particulars for which the witness was required to be recalled for cross-examination. The second ground was that the Magistrate lacked the jurisdiction under Section 311 Cr.P.C. to recall such a witness at the behest of a party to the proceedings. Such powers would be exercised Suo Moto by the Court.

6. The rejection on the second ground, in my opinion, may be misplaced since powers under Section 311 Cr.P.C may be exercised by the Court Suo Moto and can also to be exercised on an application by parties to the proceedings for reasons set out in the application. However, the impugned order is sustained on the first ground that i.e. for the fact that the application does not state in detail the particular reason why the witness was required to be recalled.

7. During the course of arguments, it was the contention of the Petitioner that the witness (DW2) was not the Manager of the Bank, where the Accused had his account, nor was he the Manager at the relevant time. In my opinion, neither of these grounds has been set out clearly in the application for the recall of the witness. Nevertheless, I have examined the deposition of the complainant and his cross-examination by the Accused. The complainant has produced the memorandum issued by the Bank of the Accused, which has returned the cheque for dishonour for the sole reason that there were "Insufficient Funds" in the account of the Accused. The Memo does not state that the cheque was dishonoured for reason that the signature differed.

8. Perusal of the cross-examination shows that there is no denial of the reasons cited in the cheque Return Memo i.e. that the cheque was dishonoured for the reason "Insufficient Funds". Even in the deposition of the witness/DW2 who has led evidence on behalf of the Accused, there is no case made out on behalf of the Accused that the cheque was returned for the signature being different. This being the case, the Trial Court would obviously consider this evidence at the final hearing stage in the light of the specific defence taken by the Accused. Here again, an observation may be made that the Bank Manager/DW2 was not a handwriting expert to opine on

the difference in signatures nor was he called upon to do so while being summoned.

9. No case has been made out to recall the witness (DW2). The impugned order is sustained for the aforementioned reasons. The Judicial Magistrate may proceed with the final hearing of the complaint in the light of the observations made above. Preferably, an endeavour would be made by the Judicial Magistrate First Class to dispose of the complaint under Criminal Case No. OA 75/NIA/2017/A within a period of three months from today.

10. The petition stands disposed of.

VALMIKI MENEZES, J.