

(2015) 03 BOM CK 0392
In the Bombay High Court
Case No : Criminal Writ Petition No. 5 of 2015

Ambaal Holdings and Others

APPELLANT

Vs

Pyramid Finance Private Limited

RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) ALLMR(Cri) 3666 : (2016) 1 BC 67

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : Vivek Rodrigues, Advocate, for the Appellant; Nigel Da Costa Frias, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

C.V. Bhadang, J.—Rule. Rule made returnable forthwith. The learned Counsel for the respondent waives notice on behalf of the respondent.

2. Heard finally, with the consent of the learned Counsel for the parties.

3. The petitioner is the original accused in a complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (the Act, for short). After the respondent/complainant had closed his side, the petitioner had entered into the witness box on 18/12/2014 and his cross-examination was partly recorded. The matter was, thereafter, adjourned to 08/01/2015 for further cross-examination. On that day, an application came to be filed on behalf of the petitioner for exemption. The learned Magistrate, by order of the even date, while granting the exemption, had proceeded to close the evidence of the petitioner. Feeling aggrieved, the petitioner has approached this Court.

4. On hearing the learned Counsel for the parties, it appears that it was only on 18/12/2014 that the further cross-examination of the petitioner was deferred. It is a common ground that the further cross-examination was deferred as the Court time was over and it was fixed on 08/01/2015. On that day, the petitioner

had sought exemption which was granted. However, the evidence was closed. The impugned order shows that what weighed the Magistrate is that the application was not supported with Medical Certificate. Considering the overall circumstances, I find that a fair opportunity can be granted to the petitioner in the matter. The learned Counsel for the respondent has alternatively submitted that in the event this Court is inclined to allow the petition, a date may be fixed for the parties to attend the Court of Judicial Magistrate, First Class, Panaji, so that the further cross-examination can be recorded/completed.

5. In such circumstances, rule is made absolute in terms of prayer clause (a). The impugned order is hereby quashed and set aside. The petitioner shall attend the Court of Judicial Magistrate. First Class, Panaji on 07/04/2015 at 2.30 p.m. for recording further cross-examination. No order as to costs. Criminal Writ Petition is disposed of in the aforesaid terms.