

(2010) 07 BOM CK 0192

In the Bombay High Court

Case No : Criminal Writ Petition No. 221 of 2010

Anwarkhan Ajij Khan Pathan

APPELLANT

Vs

Mahaveer Nagari Sahakari Patpedhi Ltd.

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 1 BC 207

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : M.M. Bhokariker, for the Appellant; A.M. Hajare, h/for, A.B. Kale, for the Respondent

Judgement

Shrihari P. Davare, J.—Heard learned Counsel for the respective parties.

2. Rule. Rule made returnable forthwith with the consent of both the learned respective Counsel, taken up for final hearing.

3. By the present petition filed under Articles 226 and 227 of Constitution of India, the present Petitioner (original accused) prayed for quashment of the order passed by learned Judicial Magistrate, First Class, Chopada in Criminal Case No. 1792/2005 on 4.2.2010 below Exhibit 73 and also "No Cross" order passed below Exhibit 22 on 19th August, 2009.

4. It appears that the Respondent herein Mahaveer Nagari Sahakari Patpedhi Ltd., Chopada, District Jalgaon is the original complainant, which has filed the Criminal Complaint (Exhibit A, page 9) on 21.12.2005 against the Petitioner herein (original accused) u/s 138 of the Negotiable Instruments Act before the learned JMFC, Chopada, District Jalgaon in respect of alleged dishonour of cheque No. 108452 for an amount of Rs. 2,72,000/-, since the said cheque was returned unpaid with the endorsement "funds insufficient". Accordingly, after recording the verification, the learned JMFC issued summons to the Petitioner

herein u/s 138 of N.I. Act by order passed on 9.1.2006.

5. The Petitioner herein (original accused) pursuant to the said summons appeared in the said matter and original complainant filed an affidavit of evidence in view of Examination-in-chief on 4.8.2007. It further appears that initially the original accused declined cross-examination on 13.11.2008. Hence, original accused, preferred an application on 25.3.2009 for setting aside the said "No Cross" order. Accordingly, the learned JMFC, considering the reasons shown in the application and affidavit, set aside the said "No Cross" order, observing that the accused was at liberty to take cross-examination by order passed on 18.5.2009. Further, on 19.8.2009, the original accused gave an application (Exhibit 16) for adjournment, stating that he was sick and was not fully prepared and sought for further date for cross-examination of the complainant. However, the learned JMFC rejected the said application on the same day, i.e. on 19.8.2009, observing that the matter was kept for cross-examination since 30.8.2007 and no sufficient reason was shown for adjournment. Thereafter the original accused preferred an application (Exhibit 73) on 9.12.2009, contending that he had been out of town on the last date and, therefore, he could not remain present before the Court and hence "No Cross" order was passed, and prayed that the "No Cross" order be set aside and accused be given opportunity to put forth his contentions since he had no intention to protract the matter.

6. Considering the rival submissions, the learned JMFC rejected the said application by order passed on 4.2.2010. Hence, the original accused has filed the present writ petition for quashing and setting aside both the said orders passed on 19.8.2009 and 4.2.2010 by the learned JMFC, Chopada, District Jalgaon, as aforesaid.

7. Without entering into the controversy as to whether the original accused was in fault or not, principles of natural justice require that the accused be given due opportunity to cross-examine the original complainant to enable him to putforth his defence, if any, through the said cross-examination as well as for fair trial, and, therefore, the quashment of aforesaid both the orders dated 19.8.2009 and 4.2.2010 would subserve the interest of justice, and shall afford opportunity to the original accused to cross-examine the original complainant. However, while quashing and setting aside both the said orders, I am inclined to impose costs of Rs. 2,000/- upon the accused for protracting the matter, and also fix up the specific date, i.e. 9th August, 2010 before the learned JMFC, Chopada, District Jalgaon, with directions to the parties, i.e. original complainant and original accused, to remain present before the said Court on the scheduled date with further directions to the accused to conduct cross-examination of the original complainant on the said date without fail and simultaneously directing the learned Trial Court to decide the said case expeditiously within the period of three months from the date of receipt of the writ from this Court and also directing the parties to cooperate the learned Trial Court.

8. In the result, the present petition is allowed in terms of prayer Clause (B)

thereof and the orders passed by learned JMFC, Chopada, District Jalgaon, in Criminal Case Nos. 1792/2005 below Exhibit 73 on 4.2.2010 and also the order passed by the said Court below Exhibit 22 on 19.8.2009, stand quashed and set aside with direction to the accused to pay costs of Rs. 2,000/- to the complainant within 15 days and further direction to both the parties, i.e. original complainant and accused to remain present before the learned JMFC, Chopada, District Jalgaon on 9th August, 2010 at 11.00 a.m. with further direction to original accused to conduct the cross-examination of the original complainant on the said date positively and without fail and the learned JMFC Chopada is directed to decide the said case within a period of three months from the date of receipt of the writ of this Court. The parties are directed to cooperate to the learned JMFC, Chopada in deciding the aforesaid matter within the time bound period and the original accused shall not seek any adjournment unless there is unforeseen and unavoidable circumstance during the course of further trial. Rule is made absolute in the aforesaid terms.