

(2008) 05 BOM CK 0017

In the Bombay High Court

Case No : Criminal Application No's. 690, 691 and 692 of 2008

Geenu Rakesh Khurana

APPELLANT

Vs

Badjate and Company and Another

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482, 91
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 3 BomCR 542

Hon'ble Judges : Lavande A.P., J

Bench : Single Bench

Advocate : J.M. Gandhi, for the Appellant; Bhattad, for the Respondent

Final Decision : Dismissed

Judgement

Lavande A.P., J.—Heard Mr. J.M. Gandhi, learned Counsel for the applicants and Mr. Bhattad, learned Counsel for respondent No. 1. None appears on behalf of respondent No. 2.

These applications have been preferred by the applicants u/s 482 of the Code of Criminal Procedure ("the Code" for short) challenging common order dated 24.1.2008 passed by the 3rd Additional Sessions Judge, Nagpur in Criminal Revision Nos. 779/07, 780/07 and 781/2007.

Respondent No. 1 herein filed Criminal Case Nos. 5874/05, 5873/05 and 5875/05 against the applicants herein alleging offence u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act").

2. The matters were adjourned from time to time. After the arguments were concluded two applications purporting to be under Sections 91 and 311 of the Code were filed by the applicants-accused in the criminal cases seeking recalling of witnesses and direction to produce certain documents. Learned Magistrate dismissed the applications. Revisions preferred against the said orders were also dismissed. The applicants have approached this Court invoking jurisdiction u/s

482 of the Code.

3. Mr. Gandhi, learned Counsel for the applicants submitted that both the Courts have committed illegality in disallowing the applications filed by the applicants inasmuch as the applicants have been deprived of an opportunity to put forth their defence. He further submitted that the powers u/s 311 of the Code can be exercised by the learned Magistrate at any stage. He further submitted that the documents production of which was sought are essential for proving the defence of the accused in criminal cases filed against them. In support of his submissions, Mr. Gandhi, relied upon the following judgments:

(i) 2005 Bom.C.R.(Cri.) 892 : 2005 All. M.R.(Cri.) 339 (Fatehsinh Mohansinh Chauhan v. Union Territory of Dadra & Haveli Silvassa Dadra & Nagar Haveli and Anr.);

(ii) 2005 Bom.C.R.(Cri.) 103 (Narayan Gurudas Kite v. State of Maharashtra);

(iii) Debiprasad Padhi and Another Vs. State of Orissa,

(iv) 2007 DGLS 415 (soft) : 2007 All. M.R. (Cri.) 1732 (Rama Paswan and Ors. v. State of Jharkhand);

4. Per contra Mr. Bhattad, learned Counsel for respondent No. 1 submitted that no fault can be found with the impugned orders inasmuch the applicants have been trying to delay the matters by resorting to dilatory tactics. He further submitted that during trial there was settlement between the parties wherein the applicants agreed to pay the amount of the cheques. He further submitted that time for payment of the amount in terms of the settlement deed was extended by an order passed by the Revisional Court. He also invited my attention to the said order passed by the Revisional Court. He, therefore, submitted that the applications have been made with a view to delay the trials and, therefore, both the Courts have rightly dismissed the applications filed by the applicants. I have considered the submissions made by learned Counsel for the parties and perused the record as well as judgments relied upon.

5. Perusal of the records discloses that the applicants have been attempting to delay the trials of cases filed against them. The grievance of the applicants that Advocate appearing initially on their behalf did not conduct the trials properly has no substance inasmuch the applicants allowed their earlier lawyer to conduct the matters for a considerable length of time and it is only at the fag end of trials, grievance is made that earlier lawyer did not conduct the cases properly. Therefore, I find no substance in the grievance made by the applicants. No doubt u/s 311 of the Code a witness can be recalled at any stage but for recalling a witness, a party who seeks to recall the witness must make out a case for recalling of such witness. A party is not entitled to seek recall of a witness at his/her sweet will. In the present case, I find that the applications which were filed before the learned Magistrate were filed with a view to delay the trials. It is also pertinent to note that at some stage, the applicants entered into settlement of

the dispute with the complainants and entered into settlement deed and time for payment was extended by an order passed by the Revisional Court.

6. It is well settled that jurisdiction u/s 482 of the Code has to be sparingly exercised in exceptional cases. The conduct of the applicants is such that they are not entitled to the reliefs sought in the applications. The authorities cited by learned Counsel for the applicants have no application in the present cases having regard to the factual situations. In my opinion, no case is made out for interference with the impugned orders in exercise of jurisdiction u/s 482 of the Code.

7. For the reasons stated above, I find no merit in these applications. All the applications are, therefore, dismissed.