
(2009) 12 BOM CK 0141

In the Bombay High Court

Case No : Criminal Writ Petition No. 63 of 2008

Lavina D''Costa

APPELLANT

Vs

Comtech Systems and Another

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 2 BC 367 : (2011) 6 RCR(Criminal) 1742

Hon'ble Judges : U.D. Salvi, J

Bench : Single Bench

Advocate : S. Vales, for the Appellant; None, for the Respondent

Judgement

U.D. Salvi, J.—Heard. Perused petition and the annexures therewith.

2. The order dated 20.10.2008 reveals that notices for posting the matter for final hearing at the admission stage were issued. Notice was served on the contesting respondent No. 1-Comtech Systems/complainant. However, notice issued to the respondent No. 2 Netcom Infotech of which the petitioner was authorised signatory has been returned unserved. The petitioner is seeking quashing of the order dated 3.5.2008 passed by the learned J.M.F.C, Panaji closing the cross-examination of the complainant's proprietor undertaken by the petitioner accused in C.C. No. 424/2001/C u/s 138 of N.I. Act, 1881 pending in the Court of J.M.F.C, Panaji. Looking to the contest on the issue involved in the present petition, the petitioner is seeking permission to delete the unserved respondent No. 2 Netcom Infotech. Permission is granted.

3. Copies of the Rojnama reveal that allotment of the case to the Court of J.M.F.C. C Court, Panaji was communicated to the concerned Court in March 2008 and the Record and Proceedings were received in the concerned Court with the letter dated 3.3.2008 from the Court of J.M.F.C. C Court. Cross-examination of the complainant's first witness-the proprietor of the complainant firm was started on 13.3.2008 and further cross-examination was adjourned to

24.3.2008. Due to preoccupation of the learned J.M.F.C, the cross-examination of complainant's witness did not resume on 24.3.2008 and the case came to be posted for further cross-examination of the said witness on 7.4.2008. Rojnama further reveals that copies of some documents were furnished to the accused on that date. The case came to be posted on 25.4.2008. It appears from the Rojnama that on 25.4.2008, the accused represented by his Advocate Mr. Vales prayed for time and the case came to be posted finally on 3.5.2008 for further cross-examination of the witness. On the adjourned date, Advocate for the accused remained absent and the cross-examination was ordered to be closed considering the age of the case and the previous order granting time as final opportunity to the accused. This order dated 3.5.2008 is now under challenge.

4. It appears that the petitioner did waste the opportunity given to him to cross-examine the complainant's witness and virtually, invited the impugned order. Learned Advocate Vales, who had represented the petitioner before the Trial Court at the relevant time now submits that the petitioner had no intention to protract the matter and prefers to go before the trial Court and resume the cross-examination to see that the case ends expeditiously. Though the petitioner has defaulted it would be prudent to give him another final opportunity to make amends in order to see that no cause is left for him to cry for loss of opportunity to cross-examine the witness. Right of cross-examination is certainly valuable, right available to the accused.

5. Considering the facts and circumstances of the present case, the following order would meet the ends of justice:

Order dated 3.5.2008 closing the cross-examination of the complainant's witness P.W. 1 in the Criminal Case No. 424/2001/C pending before the J.M.F.C, Panaji is set aside subject to the following conditions--

(i) The petitioner along with his duly instructed Advocate shall appear before the trial Court on 12.1.2010 and shall proceed with the cross-examination of the complainant's witness expeditiously.

(ii) The petitioner or his duly instructed Advocate shall give notice of this order to the respondent No. 1/complainant Comtech Systems and its Advocate on record before the trial Court by Registered Post A.D.

(iii) The petitioner shall keep her duly instructed Advocate present before the Trial Court on every given dates for expeditious disposal of the said case.

(iv) The petitioner shall pay Rs. 500/- to the Goa State Legal Services Authority.

Rule is made absolute in terms of aforesaid order.