
(2007) 07 BOM CK 0094
In the Bombay High Court
Case No : Criminal Application No. 426/07

Umesh Nanaji Shinde

APPELLANT

Vs

Moreshwar Namdeo Raut

RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

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

Citation : (2007) 07 BOM CK 0094

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : Mohan Sudame, for the Appellant; A.M. Tayde, for the Respondent

Final Decision : Allowed

Judgement

C.L. Pangarkar, J.—Rule. Returnable forthwith.

2. Heard Finally with consent of parties.

3. This is an application u/s 482 of the Code of Criminal Procedure for quashing the order passed by the Additional Sessions Judge in revision on an application for recalling of witnesses.

4. A complaint case u/s 138 of the Negotiable Instruments Act was instituted by the present non-applicant against the present applicant. It is alleged that the present applicant had issued a cheque for Rs. 30,000/- which came to be dishonoured when presented in the bank. Since it was so dishonoured, notice was issued. Payment was not made hence complaint u/s 138 of the Negotiable Instruments Act came to be instituted.

5. The evidence of the complainant was recorded by the court and even statement of the accused has been recorded by the court. Before the argument could be advanced, the complainant filed an application before the court alleging that the present applicant i.e. accused namely Umesh Nanaji Shinde is known as

Umesh Vitthalrao Girme and he is so known because of the fact that he was adopted by one Vitthalrao Girme. He submitted that he, therefore, wanted to examine certain witnesses from Vasant Rao Naik Medical College at Yavatmal where the present applicant is in service. The said application was opposed by the accused and after hearing the parties, the learned Magistrate rejected the application holding that allowing such application would amount to allowing the complainant to fill in the lacunas in the case.

6. The complainant, therefore, preferred a revision before the court of Sessions. The court of Sessions allowed the revision, set aside the order of the lower court and directed that the present non-applicant be allowed to examine the witnesses. Being aggrieved by that order, this application came to be filed.

7. After having gone through the order passed by the learned Sessions Judge, it is apparent that the learned Sessions Judge has tried to distinguish the authority placed before him which is reported in 2001 CRI.L.J. 450 B.D. Goel v. Ebrahim Haji Husen Sanghani and Ors. which was relied upon by the learned judge of the trial court. He has tried to distinguish the said authority on the ground that the complainant had discovered the fact recently and therefore he could not have examined those witnesses earlier. This observation on the part of the learned Sessions Judge was certainly not proper. After having gone through the application submitted by the complainant one finds that there is no allegation that it was not within his knowledge and therefore he could not examine the witnesses earlier. I have gone through the decision of this Court in B.D. Goel Vs. Ebrahim Haji Husen Sanghani and Others, wherein it is clearly held that if there is no explanation as to why the documents were not produced during recording of the evidence, the party should not be allowed to fill in the lacunas. The facts of the reported case are almost identical. In the reported case also, an application for recalling of the witnesses was filed after the statement of the accused was recorded. In the present case too the statement of accused has been recorded and there is no allegation that he had discovered this fact recently and therefore he could not make an application earlier. In view of the fact that it is not so alleged, it must be assumed that in spite of the fact that the complainant had knowledge, he did not try to secure such evidence and place before the court. In view of this, the order passed by the learned Sessions Judge needs to be quashed and the order passed by the Judicial Magistrate needs to be restored. Hence, the following order.

The application is allowed.

The order of the Sessions Judge is quashed and that of the Magistrate is restored.