



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL MISC. APPLICATION NO. 71 OF 2023
IN
CRIMINAL APPEAL NO. 8 OF 2025**

WITH

**CRIMINAL MISC. APPLICATION NO. 72 OF 2023
IN
CRIMINAL APPEAL NO. 9 OF 2025**

Miss. Reshma Prakash Naik,
41 years of age,
Daughter of Mr. Prakash Naik,
Resident of House No. 202/54,
Kailash Nagar, Assonora,
Bardez, Goa.

**...Applicant/
Appellant**

Versus

1. Mr. Dnyaneshwar Bhagwan
Haldankar,
Major of age,
Son of Bhagwan Haldankar,
Resident of House No. 377/1,
Haldankarwada, Porascadem,
Pernem, Goa.

2. State,
Through PP,
High Court of Bombay at Goa.
Porvorim, Goa.

...Respondents

*Ms. Annelise Fernandes, Advocate for the Appellant/
Applicant.*

Mr. Roland Fernandes, Advocate for Respondent No.1.

CORAM : VALMIKI MENEZES, J.
DATED : 5TH AUGUST, 2025.

ORAL JUDGMENT:

1. Registry to waive objections and register the Appeals.
2. Heard learned Counsel for the parties.
3. This is a common Judgment passed in the above two Criminal Appeals.
4. The Appeals are directed against two orders, both dated 21.07.2023, in two separate complaints filed under Section 138 of the Negotiable Instruments Act, where the complainant and the Accused are common. The Criminal Appeal No. 9 of 2025 arises from Criminal Case No. OA(NIA)158/2020, whilst Criminal Appeal No. 8 of 2025 arises from Criminal Case No. OA(NIA)155/2020. The complainant in both these cases is the Appellant herein. The impugned order in both cases dismisses the complaint and acquits the Respondent. The reason cited in the impugned order for dismissal of the complaint was that the

complainant did not take steps to prosecute the matter for three hearings prior to the passing of the order. In these complaints, the complainant was examined on 23.11.2022, at which date she was cross examined and further cross examination was completed on 05.12.2022. On the same date, the complainant sought a summons to be issued to a witness, a Postman, who, according to the complainant, had served the notice under Section 138 of the Act on the Respondent. The Respondent has disputed the receipt of the said notice, hence the summons. Summons were infact issued to the Postman, returnable on 12.12.2022. On that date, the Roznama records that the Postman/summoned witness who was to be examined, was present, however, he did not carry the report of service, which was to be produced in evidence. The matter was then adjourned to 16.12.2022 for recording the evidence of the Postman; however, the Magistrate has not recorded in the Roznama that the witness under summons was bound over.

5. On 16.12.2022, the proceedings did not take place, since the Presiding Officer was promoted and a fresh date was given to the parties on 03.02.2023. The Roznama records that on four successive dates thereafter i.e. 03.02.2023, 27.02.2023, 31.03.2023, and 03.05.2023, the complainant sought time, even though the complainant was personally present in the Court. The fact remains that the witness who had been summoned to

depose in the case on 12.12.2022 had not been bound over by the Magistrate, and he remained absent on all four of the above dates. The matter in the normal course ought to have proceeded on the evidence of the summoned witness, and there were no other steps to be taken by the complainant in the case.

6. A perusal of the impugned order would reveal that the Magistrate proceeded on the basis that the complainant had sought four adjournments on the dates referred above; in fact, the summoned witness was required to depose on those dates. The record reveals that the witness summoned by the Court on 12.12.2022 was not bound over. The Magistrate, in those circumstances ought to have issued fresh summons to the witness, directing the witness to remain present on any one of the aforementioned four dates of hearing, with the record required for production i.e. the report of postal service effected on the Accused; instead, the learned Magistrate cast the entire burden on the complainant either to secure the presence of the witness or to lead evidence through other witnesses. The learned Magistrate has therefore, proceeded with the matter and has instead of issuing fresh summons to the witness, dismissed the complaint and acquitted the Accused. This has obviously worked injustice to the complainant, as it was not within the complainant's power to procure the presence of the witness, except through the summons from the Court, which in

circumstances ought to have been re-issued by the Magistrate, considering that the witness was not bound over to appear on the next date on 12.12.2022 or 16.12.2022. The impugned order is therefore to be quashed and set aside.

7. Consequently, the orders dated 21.07.2023 dismissing the complaints and acquitting the Respondent are quashed and set aside, and the Criminal Case Nos. OA(NIA)158/2020 and OA(NIA)155/2020 are restored back to the file of the Judicial Magistrate First Class, Pernem. The parties shall now appear before the Judicial Magistrate First Class, Pernem, on 02.09.2025 at 10.00 a.m. The parties to place an authenticated copy of this order before the Magistrate to enable the Magistrate to proceed with the trial of the complaint by issuing a fresh summons to the witness i.e. the concerned Postman to produce the relevant report of postal service and depose on the question of service on the Accused. An application to that effect shall be filed by the complainant before the Magistrate, who shall proceed to issue a summons thereon. The Petitioner submits that she would examine two more witnesses besides the said Postman, and a necessary application for the issuance of summons to these two witnesses would be filed before the Magistrate.

8. Considering that this is a cheque bouncing case, pending of the year 2021, and since such matters are to be tried summarily and disposed of preferably within a period six months in terms of the mandate of Section 143 of the Negotiable Instruments Act, the learned Magistrate is requested to dispose of the complaint within six months from 02.09.2025.

9. Both Criminal Appeals i.e. CRIA No. 8 of 2025 and CRIA No. 9 of 2025, as well as Criminal Miscellaneous Application No. 71 of 2025 and Criminal Miscellaneous Application No. 72 of 2025, stand disposed of.

VALMIKI MENEZES