

Kishore N. Dalal vs M/S. Rao And Associates And Anr on 31 January, 2020

Equivalent citations: AIRONLINE 2020 BOM 98

Author: A.M.Badar

Bench: A.M.Badar

(19-21)WPNo.452-453-4542020(J).doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.452 OF 2020

Kishore N. Dalal	...	Petitioner
Versus		
Ganpati Parameshwar Kashi & Anr....		Respondents

WITH

WRIT PETITION NO.453 OF 2020

Kishore N. Dalal	...	Petitioner
Versus		
M/s.Rao & Associates & Anr.	...	Respondents

WITH

WRIT PETITION NO.454 OF 2020

Kishore N. Dalal	...	Petitioner
Versus		
Veena Ganpati Kashi & Anr. ...		Respondents

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Ms.Aditi Naikare i/b. Mr.Pradeep J. Thorat, Advocate for the
Petitioner in all Petitions.

Mr.R.D.Soni, Advocate for the Respondent No.1 in all Petitions.

Mr.S.V.Gavand, the Additional Public Respondent No.1/State in all Petitions.	Prosecutor	for	the
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CORAM : A.M.BADAR J.

DATED : 31st JANUARY 2020.

Gaikwad RD

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(19-21)WPNo.452-453-4542020(J).doc

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule is made returnable forthwith. Heard finally
by consent of parties.

3 All these petitions can be decided by this common Order

because two common impugned Orders dated 07/12/2019 are passed by the learned trial Magistrate in three complaint cases for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

4 The record shows that respondent No.1/original complainants had preferred complaints alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 against petitioner herein/original accused. The amount under the cheques involved in these petitions is Rs.1.63 Crores. It is also seen from the record that all three cases were fixed for cross-examining the complainants' witness No.1 on 03/02/2016.

(19-21)WPNo.452-453-4542020(J).doc It is also seen from the record that for about four years, petitioner/ original accused has chosen not to cross-examine the complainants' witness No.1. Ultimately, on 07/12/2019, as usual, applications for adjournment came to be preferred by the petitioner herein/original accused. Those applications came to be rejected by the learned trial Magistrate by passing two common orders dated 07/12/2019 below Exhibit 1 in subject complaints. 5 Heard the learned Counsel appearing for the petitioner/original accused. She vehemently argued that considering the fact that the prosecution is for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 which resulted in serious consequences, the learned trial Magistrate ought not to have rejected the application for adjournment. She submits that permission to cross-examine the witness examined by the complainants ought to have been accorded to the petition/original accused. 6 On behalf of respondent No.1/original complainants, (19-21)WPNo.452-453-4542020(J).doc Mr.Soni, the learned Counsel enters in appearance and submits that this is a case of gross abuse of process of law on the part of the accused. In submission of the learned Counsel for the respondent No.1/original complainants, offence punishable under Section 138 of the Negotiable Instruments Act, 1881 are required to be tried expeditiously as per mandate of the said Act and the same is flouted with impunity by the accused person. He, therefore,

prays for dismissal of these petitions. 7 I have considered the submissions so advanced and also perused the material placed before me.

8 Undisputedly, petitioner/accused is 83 years old senior citizen. His conduct for not co-operating the trial Magistrate in disposing of the cases for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 is not at all justified. However, still the end result of such complaints, if the same are decided in favour of the complainants, is conviction and sentence of imprisonment apart from direction to pay compensation to the (19-21)WPNo.452-453-4542020(J).doc complainants. Therefore, in my considered view, the petitioner/ original accused deserves a last chance to participate in the proceedings of three criminal cases against him. Interest of the respondent No.1/original complainants can be taken care of by imposing suitable cost.

9 The learned Counsel for the petitioner/original accused undertakes to cross-examine the complainants' witness No.1 on 1st February 2020 as complaint cases are reported to be fixed on that day. She further submits that the petitioner/original accused shall co-operate the learned trial Magistrate in getting the complaint cases decided expeditiously by not seeking adjournment except in case of extreme emergency.

10 In this view of the matter, I proceed to pass the following Order :

ORDER

(i) Impugned Order passed below Exh.1 restraining the accused from cross-examining the witness No.1 for the complainants are quashed and set aside. The Advocate (19-21)WPNo.452-453-4542020(J).doc for the petitioner/original accused is permitted to cross-

examine the witness for the complainants.

(ii) The Petitioner/original accused shall pay cost quantified at Rs.10,000/- per criminal complaints i.e. Rs.30,000/- in total to the respondent No.1/original complainants by tomorrow.

(iii) The learned trial Court is directed to decide the subject criminal complaints within a period of four months from the date of communication of the Order of this Court.

(iv) The petitioner/original accused to co-operate the learned trial Court for getting the subject criminal cases disposed of within the prescribed time limit by not seeking any adjournment in the matter, but for extreme emergency.

(v) Writ Petitions are accordingly disposed of.

(vi) Parties to act on authenticated copy of this Order.

(A.M.BADAR, J.) Raju D. Gaikwad