

C. W. No.1 Aditya on oath :-

C.C. No. 1034/SS/2019

Exh.9/15

Further Cross-examination by Advocate Mr. Jayesh Kanani for the accused:

19 It is true to say that the complainant has received Rs.15 lacs from the accused on 14.12.2013. The complainant has received Rs. 67,81,668/- during 15.10.2013 to 27.04.2015 from the accused. The complainant has received Rs.51,47,166/- between May 2015 to October 2018 from the accused.

20 The complainant has received subject cheque from the accused in May 2015. I cannot confirm whether the complainant received the cheque on 09.05.2015 itself. The witness volunteers that around or within two weeks from said date. The complainant has received the Promissory Note within same time i.e. within two weeks from 09.05.2015, I cannot recollect exact date. I cannot confirm whether Exhs. 13 and 16 were received by the complainant in the office of Chetan Visariya. It is not true to say that I was not present when the complainant received Exhs. 13, 16. It is not true to say that when the complainant received Exh. 16 no amount thereon was written. When the complainant received Exh. 16 the amount of Rs. 25 lacs was written. Now I am shown Page no. 4, paragraph no. 3 of my evidence affidavit with regard to the contents "at the same time". It does not mean 09.05.2015. I cannot confirm that on 09.05.2015 the complainant did not receive any document from the accused. I cannot confirm that on said date any joint meeting amongst complainant, accused, Chetan Visariya and myself took place. It is not true to say that on 09.05.2015, in my presence, the accused did not give any documents to the complainant.

Question Whether those documents are in possession of the complainant ?

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Answer Filed in the court.

I cannot confirm that Exhs. 13, 16 were received by the complainant on 09.05.2015.

21 It is true to say that personally I have not seen anyone filling up the contents of Exhs. 13 and 16. The witness volunteers that except signature. To my knowledge, the proprietor of Amardeep Industries, has authorized any person as authorized signatory. This fact was not informed to me by the complainant. It is not true to say that the contents of Exhs. 13 and 16 are not filled up either by proprietor or authorized signatory of Amrdeep Industries. I had occasion to interact with authorized signatory of Amrdeep Industries between 2015 to 2018. I could not understand the legal term as to whether the complainant has impleaded and prosecuted accused no. 2 as an authorized signatory of accused no. 1. I do understand meaning and significance of the term authorized signatory. On the say of the complainant, I have described accused no. 2 as an authorized signatory of accused no. 1.

22 It is true to say that between May 2015 to October 2018, the complainant has not received any TDS certificate from accused nos.1 and 2 (Learned advocate representing the accused has pointed out that the witness has answered after perusing the records available with him. Hence, note taken). The complainant did not inform me that the amounts received from the accused between May 2017 to October 2018 except Rs. 5 lacs, have been appropriated towards interest. It is true to say that the complainant did not provide any documents In support of my contentions in last paragraph in para no.3, page no. 4 of my evidence affidavit with reference to part payment of Rs. 5 lacs and interest.



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23 The complainant has prepared the Confirmation of account Exh. 14 on the basis of the ledger account maintained in the name of accused no. 1. It is not true to say that the complainant has not taken into account complete ledger account of accused no. 1 for preparation of Exh. 14. The complainant has opened the ledger account of accused no. 1 before 2009. It is true to say that for the preparation of Exh. 14, the complainant has not taken into account the ledger account of accused no. 1 from 2009 till 31.03.2016. The witness volunteers that it shows opening balance which covers the ledger account from the previous period. It is not true to say that the complainant has not taken into account the ledger account of accused no. 1 from 01.04.2016 till 31.03.2017 for preparation of Exh. 14. The complainant has received Rs.18,71,833/- from 01.04.2016 to 31.03.2017 from accused no. 1. It is not true to say that despite consideration of the ledger account of accused no. 1, for the period between 01.04.2016 till 31.03.2017, the payment received has not been reflected in Exh. 14. On perusal of Exh. 14 I say that no such specific entry has been reflected. The witness volunteers that receipt of said payment has been taken into account in Exh. 14. It is true to say that the accuracy and correctness of first entry appearing in Exh. 14 can be verified from the ledger account of accused no. 1 from 2009 till 31.03.2017. As on date, the ledger account of accused no. 1 for said period maintained by the complainant are not available. It is true to say that during the period when complainant received the amount of Rs. 18,71,833/-, the cheque Exh. 16 was available with the complainant.

24 It is true to say that prior to November 2018 the complainant had never sent any letter or demand notice to the accused



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for demanding the amount mentioned in Exh. 13. It is true to say that the complainant has not filed any legal proceedings except present case against either of the accused for recovering the amount mentioned in Exhs. 13, 16.

25 **Question** Whether the complainant was reluctant to file this case personally against the accused?

Answer No.

It is not true to say that because in past also I have filed cases u/sec. 138 on behalf of the complainant and therefore he has instructed me to file this case on his behalf. The complainant has not informed me that he would attend this court to give evidence. I did not feel it necessary that the complainant should give evidence in this case. It is not true to say that I have mentioned the name of the complainant as witness in the complaint without his instructions, knowledge, consent.

Question Do you agree now that the complainant instructed you that he would appear in this case as witness ?

Answer As per law.

It is true to say that after obtaining legal advice from the advocate for the complainant, his name (complainant) has been mentioned as the witness. It is true to say that this fact has also been communicated to the complainant.

Question Whether without having any genuine intentions to examine the complainant, only for name sake his name has been mentioned as the witness ?

Answer No.

Learned advocate representing the accused submits that he would require further time for cross-examination. Hence, as per their request and consent of the witness and the learned advocate for the complainant further cross-examination is deferred in the interest of justice.

R.O.A.C.


(V.B. Gulve-Patil)
Metropolitan Magistrate,
20th Court, Mazgaon, Mumbai.

Date : 16.03.2024