

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 584 OF 2015

Manjoor Ahmed Kureshi Fakir Mohammad....**Petitioner.**

Versus

The State of Maharashtra and Anr.**Respondents.**

Mr. A.S. Gandhi, Advocate for petitioner.

Mr. P.N. Mule, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 17th June, 2015.

ORDER :

1. The petition is filed to challenge the order made by the learned Judicial Magistrate, First Class, Aurangabad on Exh. 1 in RCC No. 132/2010. The learned J.M.F.C. has directed to send the examination of Chief of the witness Munawar Ahmed to the same Magistrate, who has recorded the examination in chief of Munawar Ahmed.

2. It appears that by oversight the predecessor of the present Magistrate has not signed on the deposition and so, such order is made. It is the grievance of the present petitioner/accused that such signature cannot be obtained and the Court needs to ignore the record of deposition available as it was not

signed. He took this Court through section 275 (4) of Cr.P.C. which shows that the evidence taken by the Magistrate shall be signed by the Magistrate and shall form the part of the record. There cannot be any dispute about this position of law. When the Magistrate signs, the record is authenticated. It is up to the Magistrate to see that whether the record is correct and due to oversight he has forgotten to sign on it. The deposition cannot be wiped out only because the Magistrate has not signed on it. It is only procedural aspect and the record can be sent to the same Magistrate for signature and it is for that Magistrate to say as to whether the deposition was recorded by him. Both the sides like prosecution and accused cannot challenge such record.

3. The learned counsel for the applicant placed reliance on the case reported as **2009 (1) Crimes 566 Punjab and Haryana High Court [Rajinder Kumar Vs. State of Haryana & Anr.]**. It is observed by the Division Bench that not signing the record will be illegality and thus, the record cannot be used. It appears that when the record was placed before the Court in appeal, this circumstance was required to be considered. The present situation is totally different. Criminal Court wants to see that the record is authenticated and the Magistrate signs on it. The deposition is not yet used in the evidence. Thus, the case

cited is not on the point involved. No merits are found in the proceeding. No notice is required to be issued.

4. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/