

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 359 OF 2015

Mr. Rehmat Ali Baig. ... Applicant.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. Sathyanarayan, advocate for applicant.

Mr. Vinit V. Jain, advocate for respondent Nos. 2 and 3.

Ms. G.P. Mulekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : AUGUST 21, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned Counsel for the respondent Nos. 2 and 3.

2 The applicant herein questions the correctness and validity of the order dated 20th March, 2015 passed by the Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, thereby rejecting the

application filed by the applicant seeking permission to lead secondary evidence.

3 The applicant herein happens to be the original complainant. The recording of evidence in C.C. No. 673/PW/2009 has commenced. The substantive evidence of the complainant is being recorded. In the midst of the proceedings, the applicant herein who happens to be the original complainant filed an application seeking permission to lead secondary evidence by tendering the photo copy of the letter dated 7/8/2001 received by him. According to the applicant, the said letter was sent to him by the accused.

4 It is the case of the complainant that the letter dated 7/8/2001 is a forged and fabricated document which is being relied by the accused in various proceedings to deny the claims of the complainant. On the basis of the said letter, further agreements were executed between the parties.

5 The learned Magistrate has observed that after framing of charge against the accused such an application has been filed. That it cannot be ascertained as to whether the original letter is available or not and if available, with whom and explanation for its non production. The said order cannot be interfered with.

6 The application seeking liberty to produce secondary evidence was filed through prosecutor. It is an admitted position that this letter did not form part of the list of the documents under Section 294 of the Code of Criminal Procedure, 1973.

7 The learned Counsel appearing for the respondents submits that in the said eventuality, it causes grave prejudice to the accused as according the learned Counsel for the respondents it is the case of the accused that the original letter is not in their possession.

8 According to the learned Counsel for the applicant, it is the accused who is relying upon the said document in various

proceedings and therefore, in all probabilities, the said document will have to be brought on record.

9 This is undisputed fact that merely tendering of the disputed letter would have no significance or bearing in the said case. The contents of the said letter as well as the authorship of the said letter will also have to be proved. Therefore, it is necessary to follow the proper procedure. In view of this, the findings recorded by the learned Magistrate do not call for any interference. However, in the interest of justice, the prosecution shall file an application under Section 294 of the Code of Criminal Procedure, 1973 and produce the said letter on record for enabling the accused to either admit or deny the document and the further course of action will be at the discretion of the presiding officer of that court.

10 In view of these observations and directions, The application stands dismissed. However, liberty is accorded to the prosecution to

file an application under Section 294 of the Code of Criminal Procedure, 1973 to produce the said letter dated 7/8/2001 on record.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)