

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2223 OF 2015

Smt. Aditi Jaiswal

...Petitioner

Versus

State of Maharashtra & Anr.

...Respondents

.....

Mr. Devashis Mitra h/f. M/s. Legal Assistance for the
Petitioner.

Mr. J.H. Ramugade, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 7th SEPTEMBER, 2015.

P. C. :

1. The present petition is directed against the order dated 21st January, 2015 whereby the learned Metropolitan Magistrate, 48th Court, Andheri, Mumbai, has dismissed the application u/s 311 of the Cr.P.C. to cross-examine Mr. Thomas Windmuller and Ms Rekha Shetty.

2. The learned Counsel for the Petitioner submits that the complaint u/s 138 of the N.I. Act was filed by Rekha Harish Shetty, on the basis of the power of attorney, executed by Thomas S. Winduller, complainant company. He contends that Rekha Harish Shetty had filed her affidavit in evidence on or about 6th August, 2012. The

complainant failed to keep her present for cross-examination and subsequently, sought leave to examine Mr. Vinay Kakar, as the power of attorney. The learned Counsel for the Petitioner submits that examination of Thomas S. Windmuller and Rekha Harish Shetty is essential to ascertain whether Thomas S. Windmuller had authority to execute the power of attorney in favour of Rekha Shetty and Vinay Kakkar and whether Rekha Shetty was authorised to lodge the complaint on behalf of the company. The learned counsel for the Petitioner, has therefore, urged that the witnesses Rekha Shetty and Thomas Windmuller be summoned under section 311 of the Cr.P.C.

3. It is well settled that the provisions under section 311 of the Cr.P.C. vests ample powers in the court to summon a material witness or to examine a person present at any stage of an enquiry or trial, or to summon any person as a witness or to recall and re-examine any person who has been examined, if his evidence appears to be essential for a just decision of the case.

4. In the instant case, P.W.-1, Rekha Harish Shetty, the power of attorney of the complainant-company had filed her affidavit-in-evidence in terms of provisions under of section 145 (1) of the Negotiable Instruments Act. Even before the witness was summoned

under section 145 (2) of the Negotiable Instruments Act the complainant-company authorized Mr. Vinay Kakkar to represent the company and sought leave to examine said Vinay Kakkar on the ground that Rekha Harish Shetty was transferred to Singapore. The said application was allowed and as a result P.W.-2, Vinay Kakkar was permitted to depose on behalf of the company. It has come on record that during the pendency of the proceedings said Rekha Shetty has resigned and is no longer in service of the complainant. As a consequence thereof the complainant was unable to make the witness available for cross-examination.

5. Needless to note that having failed to keep the witness present for cross-examination, the complainant-company cannot rely on any part of the evidence which is not tested by cross-examination.

6. Furthermore, the evidence of these witnesses is not essential for just decision of the case. Rekha Harish Shetty has resigned from the company and Thomas Windmuller is based at Singapore. The evidence of these witnesses is not necessary for just decision and summoning these witnesses would only delay the proceedings.

7. The writ petition is devoid of merits and is therefore, dismissed.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment /order.