

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

CRI. WRIT PETITION NO. 4910 OF 2014

Ramona Jaideep Garware

... Petitioner.

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. Harshad Ponda i/by Rahul Moghe, Advocate for the
Petitioner.

Mr. V. B. Konde-Deshmukh, APP for the State.

Mr. Amardev J. Uniyal, Advocate for Respondent No.2.

CORAM : M.L.TAHALIYANI,J.

DATE : 14 JANUARY, 2015

P.C. :

1 Admit. Heard finally.

2 This writ petition challenges the order passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai that while recording evidence of PW-3 in Criminal Case No. 95/SW/2003 and while the witness was in the witness box, a Bill was shown to the witness and the Advocate for the Complainant wanted to ask certain question about column no.4 of the Bill. The objection was raised on behalf of the Petitioner (accused) to the said question. The learned Magistrate ruled as under :

... The bar appearing in Sec. 59 that all facts, except the contents of document or electronic records, may be proved by oral evidence does not come in the way of the complainant because the complainant has produced primary document i.e. copy of bill as per section 62 of the Evidence Act. The objection raised on behalf of the accused is accordingly turned down.

3 At this stage, it may be mentioned here that the document has not been exhibited so far. Even if the document is exhibited, the provisions contained in section 59 of the Evidence Act are very clear on this point and does not require lengthy interpretation. Section 59 can be reproduced as under :

“S.59. All facts, except the [contents of documents or electronic records], may be proved by oral evidence.”

It is thus clear that an oral evidence in respect of the document can be led except for proving the contents thereof. The question which was asked to the witness was intended to prove the contents of the document.

4 Learned counsel appearing for Respondent No. 2 has submitted that the Respondent (Complainant) wanted to prove that column no. 4 was blank. It is his contention that

since column no.4 of the bill is blank, it cannot be said that it was a document and that respondent no.2 was attempting to prove the contents of the document. In my opinion, this argument is without any merit. Column no.4 was a part of the bill and therefore, it forms the contents of the document. It cannot be segregated from the bill which was produced in the court. In my opinion, the learned trial Magistrate could not have allowed the question to prove the contents of the documents against legal provisions of section 59. The ruling given by the learned Magistrate is not correct.

5 The order is therefore, set aside and the trial to proceed further in accordance with the law. Petition is allowed in the above said terms and stands disposed of accordingly.

(JUDGE)

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