

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.511 OF 2016

Shital Shrimantrao Bhosale,
Proprietor of Protex Computers,
Age: 35 years, Occ: Business,
R/o. Vakratunda Complex,
Flat No. 04, Tilak Nagar, 108,
Near State Bank of India,
Aurangabad, Dist. Aurangabad. ..PETITIONER

VERSUS

Mahendra s/o Keshavrao Mahakal,
R/o. Plot No. B-11, N-4, CIDCO,
Aurangabad. ..RESPONDENT

Mr S.S. Gangakhedkar, Advocate for petitioner;
Mr Shrikant G. Kawade, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 29th August, 2016

ORDER :

The accused in Summary Criminal Case No. 9994 of 2014 pending on the file of learned Judicial Magistrate, First Class, Aurangabad, moved application below Exhibit-17 with two prayers; one stating that the hand loan agreement, which is scribed on stamp paper of Rs.100/-, to be treated

(2)

as an instrument as such is subjected to the provisions of Maharashtra Stamp Act, 1958 and second that the said document may be treated as a bond under the provisions of sub section (c) of Section 2 of the Maharashtra Stamp Act, Hence stamp duty is payable under Article 13 of the Maharashtra Stamp Act; otherwise can not be accepted in evidence.

2. Both these prayers were jointly considered below Exhibit-17 by learned Magistrate and came to be rejected on 17th March, 2016.

3. Mr. Gangakhedkar, learned Counsel for the petitioner-accused while inviting my attention to the judgment of this Court in the matter of **Geeta Marine Services Pvt. Ltd. vs. State and another** reported in **2009(2) Mh.L.J. 410** would urge that unless the stamp duty is paid on a document, which has formed to be basis for initiation of the complaint under Section 138 of the Negotiable Instruments Act, the same cannot be accepted and

(3)

read in evidence and such be not exhibited. The objection to the said effect has to be raised at first instance and is accordingly raised. According to him, the said document is required to be impounded and ordered to be properly processed under the Stamp Act. He would then rely upon the judgment of this Court in the matter of **K. Mallahya Lachmarayya Gop vs Prabahakarrao Marotrao Dhote** reported in **A.I.R. 1976 Bombay 234** so as to submit that under clause (c) of Section 2 of the Bombay Stamp Act, even if the bond styled as promissory note, same cannot be exhibited, particularly when it fails to satisfy the very requirement of sub section (c) of Section 2 of the Stamp Act.

4. So far as both these contentions are concerned, same are opposed by Mr. Kawade, learned Counsel for the respondent. According to him, the issue is appropriately dealt with by learned Magistrate. According to him, apart from above, if the language of Section 34 of the Bombay Stamp Act

(4)

is perused, if the proceedings are pending before Criminal Court, even if it is claimed by learned Counsel for the petitioner that same has flavour of quasi civil proceedings, proviso will be attracted and there will not be any embargo to accept the same evidence.

5. Having dwelt upon the controversy, it is required to be noted that pursuant to proviso clause (c) to Section 34, it is to be noted that admission of instrument in evidence in a criminal Court cannot be restricted in view of the said proviso. Just because Stamp Act contemplates registration of instrument otherwise, however the above referred proviso as is referred to, take care of such contingency, as such, in my opinion, trial Court has rejected the contention of the petitioner. Apart from above, the embargo qua acceptance of such instrument in the evidence is not quasi proceedings but the proceedings if conducted before the criminal Court, statute itself provides for acceptance of such evidence. So far

(5)

as marking exhibit of such document is concerned and objection thereto could be an issue, which can be gone into by the Magistrate at final hearing stage, particularly in the light of judgment of the Apex Court in the matter of ***Bipin Shantilal Panchal vs. State of Gujrat***, reported in ***A.I.R., 2001 SC 1158***.

6. So far as the second contention that the said document executed on bond is concerned, the said issue can be dwelt upon at appropriate stage by learned Magistrate i.e. stage of final hearing.

7. In view of above, in my opinion, no case for interference in extraordinary writ jurisdiction is made out. As such, writ petition fails and stands dismissed.

(N.W. SAMBRE, J.)