

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1521 OF 2015
WITH
CRIMINAL WRIT PETITION NO.1522 OF 2015

Ramrao S/o Dharmaji Shingatwar,
Age-78 years, Occu-Retired,
R/o Near Mahadeo Mandir,
Mukhed, Tq. Mukhed, Dist.Nanded

PETITIONER

VERSUS

1. Laxman S/o Kamaji Jadhav,
Age-31 years, Occu-Agri. and Business,
R/o Umardari, Tq. Mukhed,
Dist.Nanded,

2. The State of Maharashtra,

RESPONDENTS

Mr.U.B.Bilolikar, Advocate for the petitioner.
Mr.P.P.Uttarwar, Advocate for respondent No.1.
Mr.S.G.Karlekar, APP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/06/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 26/10/2015 below application Exh.40 in SCC No.217/2012 and the order dated 26/10/2015 below applications Exh.35 and 37 in the same

proceedings. By the impugned orders, the petitioner has been precluded from producing a document and from examining a witness to prove the said document.

3. I have heard the learned Advocates for the respective sides for quite some time and have gone through the petition paper book with their assistance.

4. Summary criminal complaint is with regard to Section 138 of the N.I.Act. The petitioner had closed his evidence on 20/12/2014. At the stage of recording the defence evidence and when the accused has still not closed his evidence, the petitioner filed the applications Exh.35 and 37 for producing a document and Exh.40 for examining a witness to prove the said document.

5. The Trial Court has rejected these applications only on the ground that the statement of the accused has been recorded u/s 313 of the Cr.P.C. and hence the petitioner cannot be permitted to lead further evidence.

6. It emerges from the submissions of the learned Advocates that the cheque was issued by the accused posing to be the Proprietor of a

Firm. The accused in his statement u/s 313 of the Cr.P.C. has taken a stand that he was not the Proprietor. The petitioner, therefore, thought it fit to produce the certificate of registration of the firm available as per the records under the Shops and Establishments Act. It is mandated that the registration of a shop, by which the shop owner is given a shop license, necessarily should reflect the Proprietor of the shop/firm with his complete address. The said document could be the best piece of evidence to prove that the accused was the owner of the shop/firm.

7. It is apparent that the Trial Court has passed the impugned orders only for the reason that the statement of the accused was recorded u/s 313 of the Cr.P.C. It is quite evident that the learned Magistrate has not considered the effect of Section 311 of the Cr.P.C. which reads as under :-

*“Section 311 of the Cr.P.C. : - **Power to summon material witness, or examine person present** :- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of*

the case.”

8. I find it quite obvious that if a pedantic view is taken, the fact of the accused being the owner of the shop/firm and having issued the cheque in the said capacity, would not be proved thereby damaging the case of the petitioner. As such, on technicalities, the trial would suffer and it would be under fortuitous circumstances that the accused would be successful in the said litigation.

9. Considering the lapse on the part of the petitioner, in my view the learned Magistrate could have exercised its jurisdiction u/s 311 and could have imposed costs upon the petitioner so as to reduce the rigours of the litigation being suffered by the respondent.

10. I am unable to accept the submissions of the respondents, that once the stage of recording evidence of the petitioner is over and after the statement of the accused is recorded u/s 313 of the Cr.P.C., the petitioner is precluded from leading any evidence. The said submission would run counter to Section 311 of the Cr.P.C.

11. In the light of the above, both these petitions are allowed. Both the orders dated 26/10/2015 are quashed and set aside and

application Exh.35 and 40 are allowed.

12. Needless to state, the documents sought to be proved, can be exhibited only after the procedure under the Evidence Act is followed for proving a document. Thereafter it could be exhibited. As such, application Exh.37 stands disposed of.

13. The petitioner shall pay costs of Rs.2,500/- to the respondents by depositing the same before the learned J.M.F.C. Mukhed in SCC No.217/2012 within a period of 4 (four) weeks from today. Upon depositing of costs, the respondents herein shall be at liberty to withdraw the said amount without any conditions.

14. Rule is made absolute in the above terms. Parties to act on the print out copy of this judgment obtained from the Official Website of this Court.

(RAVINDRA V. GHUGE, J.)