

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

CRIMINAL WRIT PETITION NO. 2393 OF 2015

Bharat Ramchandra Potdar

... Petitioner

vs.

Baburao Genba Waghmode and anr.

... Respondents

Mr. Ujwal Agandsurve, Advocate for the petitioner.

Mr. Utagikar Makarand, Advocate for respondent No.1.

Ms. S. V. Gajare, Additional Public Prosecutor for the State

Coram : Smt. R. P. SondurBaldota, J.

Date : 3rd February, 2016.

P. C. :

1. This petition challenges the order dated 28th May, 2015 passed by the trial Court rejecting the application at exhibit 94 filed by the petitioner seeking permission to produce secondary evidence of photocopy of agreement dated 2nd March, 2001, allegedly executed between the parties. The trial Court rejected the application on the ground that the petitioner has not satisfied the conditions requisite for leading secondary evidence. Besides the application had been filed at the stage of final arguments in the complaint.

2. Admittedly, the petitioner has not even referred to the agreement dated 2nd March, 2001 at any point of time during the long pendency of 14 years of the complaint. It is neither pointed out to the complainant during his cross-examination nor any reference made thereto by the petitioner in his statement under Section 313 Criminal Procedure Code. Next as noted by the trial Court the petitioner has not complied with the provision of Section 65(e) of the Evidence Act.

3. In the above circumstances, the trial Court could not have allowed the petitioner to lead secondary evidence as desired. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]