

Ladda

FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPLICATION (APL) NO. 73 OF 2016  
ALONG WITH  
CRIMINAL APPLICATION (APL) NO. 74 OF 2016

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| Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr S.V. Marwadi i/by O. G. Nagwekar for the applicant.  
Smt. G.P. Mulekar, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.  
DATE : 29<sup>th</sup> June, 2016

P.C.

- 1) By the present applications under section 482 of Cr.P.C. the applicants who is the original complainant has challenged the Orders dated 4.1.2016 passed in C.C. No. 140/SS/1999 and 518/SS/1999 respectively thereby rejecting the applications preferred by the applicant for leading further evidence, only to produce on record the authorization executed or given by the complainant-Company in favour of its Manager who is pursuing the complaints.
- 2) Heard the learned counsel for the applicant and also perused the record. The respondents No. 1 and 2 are absent though duly served.
- 3) Mr Marwadi, the learned counsel for the applicant submitted that the complainant has filed in all three complaints before the trial Court under section 138 of the Negotiable Instruments Act. That this

Court by its Order has expedited the hearing of the said three cases. He further submitted that out of three cases, in case No. 139/SS/1999 accused were acquitted only on the ground that the Manager of the complainant Company did not produce the authorization letter. He further submitted that in the present two cases herein recording of the evidence is completed and the matters are posted for arguments. That in view of the acquittal of the accused persons in the earlier complaint No. 139/SS/1999 the applicant filed an application under section 311 of Cr.P.C. for issuance of summons to the material witness only with a view to prove the authorization in favour of the Manager of the complainant. The learned Trial Court by the aforesaid two separate orders dated 4.1.2016 has rejected the said application. Mr Marwadi further submitted that in view of the ratio laid down by the Supreme Court in the case of Haryana State Co-op. Supply and Marketing Federation Ltd. Vs. Jayam Textiles and Anr reported in AIR 2014 SC 1826 an opportunity ought to have been given to the applicant to place the document containing authorization on record and prove the same in accordance with law.

4) The application preferred by the applicant under section 311 of Cr.P.C. has been rejected only on the ground that the matter is expedited and posted for judgment in view of the directions given by the High Court. It is also observed by the Trial Court that as one case out of three cases has already been decided by the said Court, there is no necessity to permit the applicant to bring on record the said authorization. The learned counsel appearing for the applicant while contradicting the said observation submitted that, as per his

instructions the arguments are not yet completed and the said observation of the trial Court is incorrect.

5) In view of the judgment of the Supreme Court in the case of Haryana State Cooperative Supply and Marketing Federation Ltd. (supra), an opportunity ought to have been given to the complainant to produce and prove the authorization in favour of the Manager of the complainant and permitted him to get the minor procedural defect rectified. It is also the contention of the applicant that the said fact does not in any way change the nature of the proceeding nor the evidence which is already recorded and on record.

6) The learned counsel for the applicant submitted that as a matter of fact, the said authorization letter is already produced on record before the concerned Court and it is only to be proved by examining the witness who has issued the said authorization letter.

7) In view of the above, the orders dated 4.1.2016 passed in the aforesaid two cases passed by the learned Metropolitan Magistrate are hereby quashed and set aside. The applicant is permitted to examine the concerned witness only with a view to prove the authorization letter which is already on record of the Trial Court. The said witness shall be examined only for this purpose and for no other purpose.

8) It is needless to mention that the respondents are at liberty to cross-examine the said witness as may be permissible under the law.

9) The applications are allowed in the aforesaid terms.

(A.S.GADKARI, J.)