

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3492 OF 2015
WITH
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WITH
CRIMINAL WRIT PETITION NO. 3494 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 3495 OF 2015**

Shri Sumeet Ganpatrao Bachewar & Anr..... Petitioners
vs.
Shri Sanjay Rochiram Duhlani & Anr. Respondents

Mr. S.V.Kotwal i/b. Mr. Abhijeet Y. Patil, Advocate for the petitioners.
Ms. K.H.Rajani for the respondent No.1.
Mr.V.B. Konde Deshmukh, APP, for the State.

**CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 27th July, 2016.**

P.C.

1. Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioners herein are the accused in C.C. No.3280/2009, C.C. No.3281/2009, C.C. No.3282/2009 and C.C.

No.3283/2009. The petitioners herein question the correctness and validity of the order dated 6.7.2015 passed by the Addl. Sessions Judge, Thane, in Criminal Revision Application Nos.35/2015 to 38/2015. There is a limited issue before this Court. One Rajiv Kumar Lohriya was also an accused along with the present petitioners at the initial stage. That Shri Lohriya was discharged by the orders of this Court. The complainant had filed an application below Exhibit 82 seeking the relief of summoning Mr. Lohriya as a witness for the complainant. The said application was rejected by the learned Magistrate vide order dated 4.2.2015. Being aggrieved by the said order, the complainant had filed Criminal Revision Application Nos. 35/2015 to 38/2015.

3. It was the contention of the complainant in the Revision Applications that the proposed witness was a witness to the first MOU, wherein the cheque was issued towards a legally enforceable debt. The complainant wanted to establish the legally enforceable debt by examining Mr. Lohriya. The learned Sessions Judge has allowed the Revision Applications by setting aside the order dated 4.2.2015 and has directed the complainant to examine the witness on the fixed date. hence, these Writ Petitions.

4. The learned counsel for the respondent submits that the learned Magistrate had rejected the said application on the ground that the complainant has closed his evidence which was against the facts of the case.

5. The learned counsel for the petitioners rightly submits that the Revision Application was not maintainable as it was not a final order and it was only an observation by the learned Magistrate. However, it is a matter of record that the complainant had not brought it to the notice of the learned Magistrate that the complainant has not filed 'evidence closed pursis'.

6. The learned counsel for the respondent submits that the accused cannot be granted any latitude to rebut the presumption and, therefore, the complainant desired to substantiate the contents of the earlier MOU. This contention would hold no ground since the presumption is to be drawn by the Court on the basis of the evidence adduced by the complainant/prosecution and the accused has the liberty to rebut the said presumption on the basis of the independent evidence at the stage of 313 or on the basis of the evidence put forth by the complainant. That would lie within the ambit of the learned Court

seized with the matter. It is in these circumstances that this Court is of the opinion that at the threshold, the Revision Application itself was not maintainable under Section 397 of Cr.P.C. and, therefore, the order passed therein deserves to be quashed and set aside. The order dated 6.7.2015 passed by the Addl. Sessions Judge, Thane, is quashed and set aside.

7. It is made clear that the learned trial Court shall not be influenced by any of the observations made by this Court as this Court has set aside the order mainly on the ground that the Revision Application itself was not maintainable.

8. Rule is made absolute with the above direction. All the Petitions stand disposed of.

(SMT. SADHANA S.JADHAV, J.)