

Anand

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

WRIT PETITION NO.4168 OF 2015

Amit Datta Majumdar .Petitioner

Vs.

The State of Maharashtra & anr. .Respondents

Mr.Jayesh Patel, Advocate, for the Petitioner
Ms Pallavi Dabholkar, APP, for the Respondent
No.1 – State
Mr.S.Ingale, Advocate, for the Respondent No.2

CORAM : REVATI MOHITE DERE, J.

DATE : 26.10.2016

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the Judgment and Order dated 08.09.2015 passed by the learned Addl. Sessions Judge, Greater Bombay. By the said Judgment and Order, the learned Sessions Judge had permitted the Complainant to recall and re-examine P.W.2 Advocate Anupam Dighe and adduce secondary evidence in respect of Demand Notice dated 23.01.2008.

3. Learned counsel for the Petitioner states that the provisions of the Evidence Act for leading secondary evidence have not been complied with. He submits that Respondent No.2 (Original Complainant) is trying to fill in the lacuna which cannot be done.

4. Learned counsel for the Respondent No.2 (Original Complainant) opposes the Petition. He submits that no interference was warranted in the impugned Judgment and Order. He submits that the Demand Notice was already on record at the time of filing of the Complaint. He submits that by recalling and re-examining P.W.2 Advocate Anupam Dighe, to prove the Demand Notice dated 23.01.2008, the Respondent No.2 would not be filling in the lacuna.

5. Perused the papers, in particular, the impugned Judgment and Order dated 08.09.2015. It is not in dispute that the xerox copy of the

Demand Notice was already in existence and was annexed to the complaint filed by the Respondent No.2 (Original Complainant) in the trial Court. No interference is warranted in the impugned Judgment and Order. Needless to state, that the learned Judge shall bear in mind the provisions of the Evidence Act, in respect of secondary evidence.

6. The Petition is dismissed on the aforesaid terms.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)