

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3728 OF 2016

M/s. M.E. Engineers Combine Pvt. Ltd. & Anr. ... Petitioners

Vs.

K.K. Somani & Anr. ... Respondents

Mr. M.K. Kocharekar i/b. Kafil A. Khan, Advocate for the petitioners.

Mrs. Anamika Malhotra, APP for the respondent/State.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 1st December, 2016

P.C.:

Rule. By consent, rule is made returnable forthwith.

2. This Writ Petition is directed against the order dated 20th August, 2016 passed by the learned Additional Sessions Judge, Borivali, Div. Dindoshi thereby confirming the order passed by the learned Metropolitan Magistrate, 43rd Court, Borivali dated 23rd February, 2015, by which the production of original documents is allowed.

3. The learned counsel for the petitioners has submitted that the procedure laid down under sections 135, 137 and 138 of the Indian Evidence Act is not followed by the learned Metropolitan Magistrate. The complainant, who has filed the complaint under section 138 of N.I. Act, is under cross-examination and in between, the application was made for producing the original documents and for recalling PW-1, i.e. complainant under section 311 of Cr. P.C. for the purpose of only production of original

documents. The main contention raised by the learned counsel for the petitioners that after completion of the cross-examination, the complainant can be re-examined and in the re-examination, the original documents are permitted to be tendered as evidence and be exhibited.

4. Perused the order passed by the learned Magistrate and the detailed order passed by the learned Additional Sessions Judge, Borivali. A procedure laid down under sections 137 and 138 of Indian Evidence Act is to be followed, however, section 135 which is on “**Order of production and examination of witnesses**” states that “witness is to be produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.” In the present case, the complainant was examined first and his examination-in-chief is on record. He did not produce the original documents necessary on record to adjudicate the matter legally and correctly. After examination-in-chief, no cross-examination order was passed against the petitioners. Subsequently an application was made on 22nd September, 2009 to recall witness, i.e., PW-1. It appears from the order passed by the learned Additional Sessions Judge that the learned Magistrate has not passed any order on the same application till today, however, not passing order on the said application will not come in the way of cross-examination which has commenced subsequently on 9th June, 2015. Thus, the Court has allowed

the petitioners to cross-examine the complainant. The two prayers were made in the application by the complainant dated 3rd November, 2014 that he be allowed to produce the original documents on record and he be recalled as a witness for the purpose of only production of those documents under section 311 of Cr. P.C. Thus, this application was made prior to the commencement of the cross-examination. Under section 311 of Cr. P.C., the trial Court is given the power to summon material witness or to examine the person present in the Court at any stage of any inquiry and trial. Under section 135 of Evidence Act if there is specific provision of calling the witness, then the Court can follow that procedure. Section 311 empowers the Court to examine the witness at any stage. Similarly, under section 135 of Evidence Act, it is the matter of discretion of the Court and thus the trial Court has acted under section 311 of Cr. P.C., as the application dated 3rd November, 2014 was made specifically under section 311 of Cr. P.C. Hence, the sequence of examination-in-chief, cross-examination and reexamination though is laid down which is to be followed generally, but in this case, I am of the view that the trial Court and Sessions Court are correct in allowing production of original document in between the cross-examination and I find no illegality in their orders. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)