

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

WRIT PETITION NO. 4757 OF 2015

Shri Ajay Dwarkadas Thakkar

... **Petitioner.**

Versus

State of Maharashtra & Anr.

... **Respondents.**

Mr. Anuj Saxena h/f. Mr. Amit Khare for Petitioner.

Mr. V.B. Konde-Deshmukh, APP for Respondent No.1-State

Mr. D.M. Galani with Mr. M.H. Ramsinghani for Respondent No.2.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 14TH JULY, 2016.

P.C. :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The Petitioner is aggrieved by the order dated 10.8.2015 delivered by the learned Metropolitan Magistrate, 53rd Court, Mulund, Mumbai, by which application Exhibit 53 in CC No.54/SS/2011 has been rejected.

3] I have heard the learned Advocates for the respective sides for quite some time.

4] The issue is that the Petitioner who is the Respondent in the Court below has prayed for production of documents in the nature of a Memorandum of understanding between the complainant-company and the petitioner. The said documents have not been filed on record and hence the petitioner prays for production of the said documents on the ground that the concerned documents would support the case of the petitioner.

5] An application Exhibit 49 for production of the same documents had been filed by the petitioner. By order dated 5.3.2015, the said application was rejected by the learned Court below only on the ground that it did not reflect the proper provision and the application was not precise. It was specifically observed by the learned Court that if the accused wants these documents on record, the application should be precise and it should state the details of the documents.

6] Learned Advocate for respondent No.2 has strenuously submitted that in the light of the order rejecting Exhibit 49, application Exhibit 53 was not tenable and since the order below Exhibit 49 has not been challenged before the superior Court,

application Exhibit 54 was bound to be rejected.

7] I am unable to accept the submissions of the learned Advocate for respondent No.2 for the reason that application Exhibit 49 was rejected only because the Court below noticed that it was a vague and inaccurate application. In fact the Court below noted that if the accused want the documents to be placed on record, a precise application should have been filed. It is in this backdrop that application Exhibit 54 was filed.

8] Insofar as the prayer of the petitioner for production of the Memorandum of understanding said to have been arrived at between original complainant and the accused is concerned, the learned Magistrate in the impugned order at paragraph 6 as specifically noted that;

“Further, if it is admitted on behalf of the authorized representative of complainant co. that he will produce the documents and if not produced adverse inference can be drawn about it.”

9] In my view, the above said observation of the learned Magistrate has sufficiently taken care of the interest of the petitioner.

It is given to understand that the Memorandum of understanding enumerates that the petitioner-accused had agreed to make the payment through cheques and subsequently the said cheques have been dishonoured and hence the proceedings before the learned Magistrate.

10] In this backdrop, I find that the learned Magistrate has rightly observed that the production of the said documents which is assured by the complainant-company, would not only be in the interest of the accused but, would also be in the interest of the original complainant.

11] Considering the above observations of the learned Magistrate, I do not think that the learned Magistrate was required to pass yet another order for the production of documents. This petition is therefore, devoid of merits and is disposed of. Rule is discharged.

(RAVINDRA V. GHUGE, J.)