

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.250/2016

M/s. Polaris Steel Castings Pvt. Ltd., through its Directors

..Versus..

M/s. Century Steel Traders, through its Proprietor

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 29.3.2016

Heard Shri M.D. Samel, advocate for the petitioner.

The challenge is to the interlocutory order passed by the learned Magistrate rejecting the application (Exh. No.137) filed by the petitioner praying that the additional affidavit filed by the respondent no.1 - complainant and the certificate of registration under the Maharashtra Shops and Establishments Act dated 27th January, 2014 which are exhibited, be de-exhibited.

The respondent has filed complaint under Section 138 of the Negotiable Instruments Act, 1881. The trial progressed and after recording of evidence of both the sides was over, the respondent filed an application seeking permission to file the documents. This application was rejected by the learned Magistrate. This order was challenged by the respondent before this Court in Criminal Writ Petition No.58/2016 which came to be allowed by the judgment dated 20th January, 2016. The operative order is as follows:

“[a] Criminal Writ Petition No.58/2016 is allowed.
[b] The impugned order dated 22nd December, 2015, passed by learned Sixth Joint Civil Judge [Junior Division] & Judicial Magistrate First Class & Special Court No.5 trying cases under the

Negotiable Instruments Act, Nagpur, below Exh.115 in Summary Criminal Case No.8250 of 2012 is quashed and set aside and the application [Exh.115] is allowed.

[c] The petitioner is allowed to file the original document on record and thereafter liberty is granted to both sides to lead such evidence as is necessary, strictly restricted to the said document.

[d] Petitioner shall pay costs in the sum of Rs.10,000-00 [rupees ten thousand only] to respondent by way of compensation for procrastinating the trial, as a pre-condition.

[e] Liberty is reserved in favour of the respondent to make submissions as to the effect of the admission in the cross-examination - qua the original document which shall obviously be judged by the trial Judge on its own merits.

[f] The trial shall be completed within four weeks.

[g] parties to appear before Trial Court today.”

The petitioner challenged the judgment passed by this Court in Petition for Special Leave to Appeal (Criminal) No.1448/2016 which is disposed by the order dated 26th February, 2016 in the following terms:

“Having heard learned counsel for the petitioner, while not inclined to interfere, we observe that it will be open to the petitioner to file an application before the learned Magistrate to call for the original records as to test the veracity of the certificate produced by the respondent-plaintiff.

With the aforesaid observation, the special leave petition stands disposed of.”

The respondent filed additional affidavit in lieu of evidence as per the liberty granted by this Court vide clause [c] of operative order of the judgment passed in Writ Petition No.58/2016. The

respondent also entered the witness box and has led evidence. At this stage, the petitioner filed the application (Exh. No.137) which is rejected by the learned Magistrate by the impugned order.

Shri Samel, advocate for the petitioner has submitted that the learned trial Judge has committed an error of jurisdiction by exhibiting document filed by the respondent and taking the additional affidavit in lieu of evidence of the complainant on the record and permitting the respondent - complainant to enter the witness box. It is submitted that recording of evidence on the part of the respondent - complainant was over and the learned Magistrate could not have permitted the respondent - complainant to enter the witness box and to lead evidence unless principles governing the provisions of Section 311 of the Criminal Procedure Code were satisfied. It is submitted that the respondent - complainant has not filed any application under Section 311 of the Criminal Procedure Code and without such application it could not have been permitted to lead evidence. It is submitted that this Court while allowing the Writ Petition No.58/2016 permitted the parties to lead evidence only to prove the document produced by the respondent and the respondent was permitted only to examine the authorities of the department from where the document was obtained and respondent was not permitted to enter the witness box himself. In support of the submissions, Shri Samel, learned advocate for the petitioner has relied on the following judgments:

- (i) Judgment given in the case of *Rajaram Prasad Yadav V/s. State of Bihar and another* reported in **AIR 2013 SC 3081** and
- (ii) Judgment given in the case of *Hanuman Ram V/s. State of*

Rajasthan and others reported in **AIR 2009 SC 69**.

It is prayed that the impugned order be set aside and the application (Exh. No.137) filed by the petitioner be allowed in terms of the prayer of that application.

In my view, the submission made on behalf of the petitioner relying on the provisions of Section 311 of the Criminal Procedure Code is misdirected. This Court while delivering the judgment in Writ Petition No.58/2016 permitted the parties to lead evidence in support of document permitted to be produced on the record. This judgment was challenged before the Hon'ble Supreme Court and is not interfered with. In these facts, it cannot be said that the learned Magistrate has committed any error of jurisdiction by not advertng to the provisions of Section 311 of the Criminal Procedure Code.

I see no reason to interfere with the impugned order. The writ petition is **dismissed**.

JUDGE

Tambaskar.