

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 855 OF 2017

M/s. Deve Paints Ltd. ... Petitioner
Vs.
Ramona Jaideep Garware & Anr. ... Respondents

Mr. J.A.Udaipuri i/b. Sweedal Karkada, Advocate for the petitioner.
Mr. H.H.Ponda, Advocate for respondent No.1.
Ms.A.M.Malhotra, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 29th March, 2017.

P.C.

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

2. The petitioner herein happens to be the original complainant in C.C. No.95/SW/2005 pending before the Addl. Chief Metropolitan Magistrate, 40th Court at Girgaum, Mumbai.

3. Being aggrieved by the order dated 17.11.2016 passed below Exhibit 218, the petitioner has filed the present petition.

4. It appears that the application below Exhibit 218 was filed at the stage when the defence witness No.1 was being examined. It appears that defence witness No.1 was confronted with the copy of the annual report of the said company. Needless to say that the said document/annual

report was not incorporated in the list of documents and therefore the accused had no knowledge as to whether the complainant desires to place any reliance whatsoever on the said document at the time of trial. DW-1 had stated as follows :-

“I can't identify the Annual Report if shown to me even if it is shown to me in a printed form. Now Annual Report for the year 1992-93 is shown to the witness and he is asked whether this copy is one of those which were printed then and sent to the shareholders. (Ld. Adv. for the accused objected to show the Annual Report to the witness in cross-examination without complying provisions contained in section 294 of the Code of Criminal Procedure because the Annual Report which is shown to the witness is not part and parcel of the record). (Ld. Adv. for the complainant submits that during cross-examination it is not necessary to comply with section 294 of the Code of Criminal Procedure. (The question put by Learned Advocate for the complainant is allowed subject to objection raised on behalf of the accused).”

5. The witness had categorically stated that he would be unable to state anything about the Annual Report and that he cannot produce the copy of the Annual Report for the year 1992-93 because he is not in possession of the copy of the said document. Thereafter, the application below Ex.218 was filed.

6. Upon perusal of the application filed by the complainant, it is

clear that the complainant had not stated in the application the source from where he had got the Annual Report neither it was mentioned that copy of the same has been taken from the Registrar of Companies. Moreover, after the defence witness No.1 had expressed his inability to prove the said document, the same was placed on record at the time of examining the defence witness No.2 – Suhas Narayan Aroskar.

7. The learned counsel for respondent No.1 submits that the document which is not identified by DW-1 was again being confronted with defence witness no.2. According to the learned counsel for the complainant/petitioner, the original copy was misplaced by the complainant and, therefore, what was being produced on record was a copy of the said Annual Report and therefore according to the petitioner, the application filed under Section 65 of the Indian Evidence Act ought to have been allowed. DW-2 had stated as follows :-

“I do not remember said transaction at all. I do not remember that such due amount was shown in the balance sheet of Garware Paints Ltd. If it is a major transaction it would reflect in the Annual Report of the company.”

It is seen from the records that the defence witness No.2 also did not have a copy of the Annual Report and it was not necessary for

him to place it on record. The defence witness No.2 was also an employee i.e. he was working as a General Manager – Accounts. Till the stage of confronting the witness with the said Annual Report, there was no application by the petitioner that the Annual Report of the year 1992-93 is either lost or is destroyed. The petitioner had made no attempt to get certified copy of the same from the Registrar of Companies and, therefore, the said document would be a disputed document.

8. The learned counsel for the petitioner fairly submits that the application below Exhibit 218 was not happily worded and seeks liberty to file a fresh application.

9. The learned counsel for respondent No.1 has vehemently objected to the filing of any such application by the petitioner as it would protract the trial. Moreover, the trial is being delayed at the behest of the original complainant. The learned Magistrate in the eventuality of such an application being filed, shall consider the same on its own merits and decide the same after hearing both sides in accordance with law, more particularly under Sections 65 and 66 of the Indian Evidence Act. The learned Magistrate shall first determine the very maintainability of the said

application at the stage of cross-examination of the defence witness.

10. With these directions, the Petition stands disposed of. Rule is discharged.

(SMT. SADHANA S.JADHAV, J.)