

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1119 OF 2017

THE GODAVARI SUGAR MILLS LTD.)...PETITIONER

V/s.

SUBHASH GANPAT SHEWALE AND ANR.)...RESPONDENTS

Mr.Sandesh Patil i/b. Mr.P.S.Gole, Advocate for the Petitioner.

Mr.J.S.Yadav, Advocate for Respondent No.1.

Ms.N.S.Jain, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 20th SEPTEMBER 2017

P.C. :

1 Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 The petitioner, who is complainant before the learned trial court, by this petition, is challenging the order dated 15th December 2016 passed by the learned trial Magistrate rejecting

the application under Section 311 of the Code of Criminal Procedure for recalling PW1 Deepak Nimbalkar in order to prove original resolution passed by Board of Directors authorizing him to depose on behalf of the complainant.

3 Heard the learned advocate appearing for the petitioner. He argued that though photocopies of the resolution authorizing PW1 Deepak Nimbalkar to depose on behalf of the petitioner / original complainant Company was placed on record, because of inadvertence original thereof was not filed on record. This is the only lacuna in the case of the complainant / petitioner, a procedural irregularity which needs to be cured for attaining finality to the litigation.

4 The learned advocate appearing for respondent no.1 opposed the application by contending that the impugned order reflects that by this mode, the petitioner wants to fill in the lacuna in the prosecution case.

5 I have carefully considered the rival submissions and also perused the impugned order rejecting the application for recalling PW1 Deepak Nimbalkar.

6 Section 311 of the Code of Criminal Procedure envisages that if evidence of any witness appears to be essential for just decision of the case, then the trial court can recall the witness. In the case in hand, photocopy of the resolution was already on record and the complainant only wanted to produce original resolution on record and to prove the same by further chief examination of PW1 Deepak Nimbalkar. As the prosecution is for the offence punishable under Section 138 of the Negotiable Instruments Act, this aspect is important and recalling the prosecution witness for this purpose is essential for just decision of the case and for attaining finality to the litigation. There is no question of filling of lacuna in the prosecution case. Resultantly, the impugned order cannot be sustained and therefore the order :

ORDER

- i) The petition is allowed.

- ii) The impugned order dated 15th December 2016 passed by the learned trial Magistrate on an application at Exhibit 53 in Summary Criminal Case No.481 of 2014 is quashed and set aside.
- iii) The application at Exhibit 53 for recalling the prosecution witness for proving the resolution is allowed.
- iv) The petition is accordingly disposed of.
- v) Rule is made absolute accordingly.

(A. M. BADAR, J.)