

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

CRIMINAL WRIT PETITION NO. 1240 OF 2016

Mr. Deepak Baldev Khatri & Anr. ... Petitioners.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. A. S. Rao i/by Mr. Prashant C. Kamble, Advocate for the
Petitioners.

Ms. Anamika Malhotra, APP for the State.

CORAM : RAVINDRA V.GHUGE,J.

DATE : 14 MARCH, 2017

P.C. :

1 The Petitioner is aggrieved by the impugned order dated 01.03.2016, only to the extent of the directions of the trial court by which the accused are directed to produce the documents.

2 The learned counsel for the Petitioners submits that the direction of the trial court to the extent of mandating the witness to produce the documents does not aggrieve the petitioner and he is not challenging the impugned order to that extent. However, the Petitioner is aggrieved by the direction of the trial court as it has observed in paragraph-3 that "As regards documents claimed from accused are concerned,

prosecution has claimed that those are in custody of accused. Hence, it would be just and proper to direct accused also to produce such documents, if any, available with them.”

3 The petitioner then criticized the directions of the trial court at clause (3) of the operative part of the order by which the Petitioner accused is directed to produce the documents, if any, as may be claimed by the prosecution. He submits that section 242 of the Code of Criminal Procedure would empower the Magistrate to direct the witness to produce the documents. Section 242 does not vest any jurisdiction in the Magistrate to direct the accused to produce documents.

4 The learned APP appearing on behalf of the State submits that the learned Magistrate has already passed a speaking order dated 20.01.2017 below application Exh. 83 in RCC No. 73 of 2008 by which the Ulhasnagar Police Station has been directed to carry out further investigation in the concerned case. It is further submitted that the procedure under section 91 of the Cr.P.C. would be resorted to so as to ensure that such documents which are in possession of the accused would be produced before the court.

5 In the light of the above and keeping in view the scope of section 242 of Cr.P.C., this petition is partly allowed

only to the extent of the direction of the trial court at clause (3) of the operative part of the order and consequentially, the said direction at clause (3) is set aside.

6 Needless to state that prosecution would be at liberty to follow the procedure under section 91 of the Cr.P.C., as stated above.

(RAVINDRA V.GHUGE,J.)

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