

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 385 OF 2016
IN
CRIMINAL CASE NO. 1708/SS/2015

Kalpesh V. Satra

.....Applicant

V/s.

M/s. Ajanta Paper Centre and anr.

.....Respondents

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Mr. S.R. Sarwankar i/by. Sarwankar and Co., Advocate for the applicant.

Mr. Jatin P. Shah, Advocate for respondent no.1.

Ms. Pallavi Dabholkar, APP for State, respondent no.2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 24TH JANUARY, 2017.

P.C. :-

1). This petition challenges the order of the trial Court exhibiting Delivery Challans as Exhibits-18 to 21 and a Certificate issued under Section 65(B) of the Indian Evidence Act as Exhibit-23 subject to the objections to the proof of the documents raised by the petitioner who is an accused in the proceedings under Section 138 of the Negotiable Instruments Act.

2). Mr. Sarwankar, the learned Advocate appearing for the applicant submits that, considering the nature of the objection raised, it was necessary for the trial Court to decide the objection there and then and not leave it to the stage of the final hearing of the complaint. In this connection, he relies upon decision of the Full Bench of our High Court in **Hemendra Rasiklal Gita V/s. Subodh Modu, reported in 2009 (2) AIR Bom R page 296.** By the decision, the Full Bench has held that, where objection to a document is directed towards the mode of proof alleging the same to be irregular or insufficient, the same should be taken when the evidence is tendered. The risk in postponing the decision to a subsequent stage is discussed at para-75 of the decision in following terms :-

“75. If the objection to the proof of document is not decided and the document is taken on record giving tentative cross-examiner exhibit, is then seriously the prejudiced. Once the document is used in cross-examination, then the document gets proved and can be read in evidence as held by the Supreme Court in the case of [Ram Janki Devi v. M/s.Juggilal Kamlapat, Kamlapat](#) 1971 (1) SCC 477 : AIR 1971 SC 2551. If the cross-examiner decides not to cross-examine based on unexhibited document and, ultimately, at the fag end of the trial, the document is held to be admissible and proved, then, the cross-examiner as a rule of fair play

would be entitled to further opportunity to cross-examine based on that document resulting in delayed trial defeating the very object and purpose of the amendment to the C.P.C.”

3). Undoubtedly, Mr. Sarwankar is right in his argument. But the question is whether the matter should be remanded to the trial Court for its decision on sufficiency of proof. Ordinarily, a remand would be in order. However, considering the pendency of the present petition for almost an year, it would be necessary to see the specific nature of the objection taken. If there is even some substance in the objection taken, the matter would deserve remand.

4). The objection of the petitioner to the Delivery Challans at Exhibit-18 to 21, is that the witness who is a partner of the complaint is not the author of the documents. The witness has deposed that, on delivery of the goods by the complainant, the Delivery Challans were issued which had been signed by the authorised signatory, one Raju Shah of the complainant. Since the witness is a partner of the firm with whom Rajesh Shah is working, there can be no difficulty for the witness identifying the signature of the authorised signatory. The next document objected to, is the Certificate at Exhibit-23 under Section 65B of the Indian Evidence Act. The objection of the petitioner is that, the Certificate is not by the person operating the concerned computer. The Certificate is by the witness himself who is a partner in the firm. The Certificate contemplated under Section 65B (2)(a) is a Certificate by a person having lawful control over the use of the computer and not by a

person who actually operates the computer. The provision of Section 65B(2)(a) reads as under :-

“65. Cases in which secondary evidence relating to documents may be given.-

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :-

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely :-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;”

Thus, there is no substance in the petitioner's objection to the Certificate at Exhibit-24 also. In the circumstances, the decision of the Court in exhibiting the documents is correct. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)