

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1568 OF 2016**

Jaya Pradeep Aliani Petitioner

Vs.

Shri. Dilip Parsram Sharma & Anr. Respondents

Mr. Suresh A. Malkaini, Advocate for Petitioner.
Mr. Pawan Mali, Advocate for Respondent no.1
Mrs. Anamika Malhotra, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 9th January, 2017

P.C.

1 This petition is directed against the orders dtd. 19th August, 2014 passed by the trial court rejecting the application at Exhibit 85 filed by the petitioner and the order dtd. 26th February, 2016 passed by the Sessions Court dismissing the petitioner's Criminal Revision Application No.215 of 2014.

2 The facts stated in brief leading to the present petition are that in the proceedings under Section 138 Negotiable Instruments Act initiated by respondent no.1, the petitioner-accused had filed the application at Exhibit 85 for issue of witness summons to Assistant Registrar of Money

Lenders. The application was filed 19th August, 2014 at the stage of the final arguments in the trial. Undisputedly the evidence of the complainant was over on 25th July, 2013. Thereafter the statement of the petitioner under Section 313 Code of Criminal Procedure was recorded and the petitioner examined his five witnesses. On 30th June, 2015, when the matter was to proceed for arguments, he filed an application under Section 311 Cr.P.C. for recalling of respondent no.1 for further cross-examination. That application was dismissed by the trial court by its order dtd. 30th July, 2014. Thereafter, the petitioner filed Criminal Revision Application to the Sessions Court to challenge the order and also the present application for examining an additional witness.

3 There is no explanation set out in the application for not examining the witness while the trial in the proceeding was in progress. The application merely states that the petition prefers for issue notice to the Assistant Registrar, Money Lenders, Kalyan for production of two documents i.e. (i) particulars of Form No.3 (Rule 9) under the Bombay Money-Lenders Rules, 1959 maintained in the name of complainant, Shri. Dilip Parasram Sharma and (ii) particulars and details of income and expenditure account for the period of 1st April, 2013 to 31st March, 2014 including bank account maintained for money-lending business by the complainant. However, it appears that during the course of hearing of the application, it

was submitted across the bar that the petitioner has now learnt that respondent no.1 is registered with the Assistant Registrar, Money Lenders and holds a money lending license. The application was opposed by respondent no.1 contending that it was not even suggested to respondent no.1 during his cross-examination that respondent no.1 had advanced loan on interest and was doing the business of money lending. The claim of respondent no.1 in his complaint is that the amount of Rs.5,00,000/- was advanced to the petitioner as a friendly loan.

4 By it's order dtd. 26th February, 2016, the trial court took a view that since the record and arguments of the parties reveal that there was no defence of the petitioner in respect of money lending, it was not justifiable to issue summons to the Assistant Registrar of Money Lenders and dismissed the application. The Sessions Court, in addition to the above reasons also observed that the application had been filed in an absolutely casual manner and that the possibility of protracting of the trial at the hands of the defence cannot be ruled out. It further noted that another attempt on the part of the petitioner to fill up the lacunae in the defence was by recourse to Section 311 Cr.P.C, which attempt also did not succeed since his application was dismissed by the trial court and the order of dismissal upheld by the Sessions Court.

5 Mr. Malkani , the learned advocate for the petitioner submits that dismissal of the application for issuance of witness summons as requested by the petitioner would amount to denial of an opportunity to him to establish his defence to the prosecution. He implores that respondent no.1 being money lender, the petitioner must get an opportunity to bring that evidence before the court.

6 He refers the decision of the Apex Court in Natasha Singh vs. Central Bureau of Investigation (State), reported in (2013) 5 Supreme Court Cases, page 741 to submit that the issue to be considered while seeking witness for examination is only the admissibility or relevance of the evidence of the concerned witness and not it's likely probative value. There can be no dispute about this proposition. What has been observed by the courts below is that in the facts disclosed by the record and the defence taken, the witness would not be a relevant witness. Hence, the decision cited is not applicable to the facts of the case.

7 In my considered opinion, there is no merit in the submissions advanced because it has never been the defence of the petitioner that the advance of money to her was a transaction of money lending by charging interest on the amount advanced. It also cannot be lost sight of that the specific case of respondent no.1 is that advance of money to the

petitioner is friendly loan given to her. Therefore, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)