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

CRIMINAL APPLICATION NO. 534 OF 2017

Jayesh Shah

... Applicant

V/s.

1] M/s Visa Syndicates

2] Mr. Vimal Jain,

3] State of Maharashtra

... Respondents

Mr. Jayesh Shah/Applicant present in person.

Mr. M.H. Ramsinghani for Respondent Nos.1 & 2.

Mr. N.B. Patil, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 31st OCTOBER, 2017

P.C.:

1] By this application under Section 482 Cr. P.C., the applicant has impugned Orders dated 13th April 2017 passed below Exhibit-8 in C.C. No.325/SW/2006, Exhibit-7 in C.C. No.326/SW/2006, Exhibit-8 in CC No.327/SW/2006, and Exhibit-9 in C.C. No.328/SW/2006 dismissing Notices under Section 294 of Cr. P.C. filed by the applicant.

2] Heard the applicant appearing in person, learned Counsel for respondent Nos.1 and 2 and the learned APP for state and perused the record.

3] Applicant is the original complainant in the aforestated CC Nos.325/SW/2006 to 328/SW/2006 pending on the file of Metropolitan Magistrate, 6th Court, Mazgaon, Sewree, Mumbai filed under Sections 420 read with 34 of the Indian Penal Code. In the said complaints, after issuance of process the accused persons caused their appearances. The said complaints are at a stage of recording evidence before charge. The applicant thereafter filed an application under the caption of 'Notice under Section 294 of Cr. P.C.', thereby submitting a list of documents on which he placed reliance in support of his case, calling upon the accused/other side, either to admit or deny the genuineness of each of the documents mentioned in the said list marked as 'Annexure -A'.

The Trial Court rejected the said application by the aforestated impugned Orders on the ground that, none of the documents as mentioned in the list/annexure are filed on record by the Complainant at the time of presentation of the complaint.

4] Mr. Jayesh Shah, the applicant appearing in person submitted that, after the stage as contemplated under Section 294 of Cr. P.C. has reached, he filed the list of documents marked as 'Annexure-A' along with Notice under Section 294 of Cr. P.C. and called upon other side, either to admit or deny the genuineness of the documents and according to him the said documents mentioned in the list need not be annexed with the complaint or even with the list/annexure as there is no mandate for the same. He further submitted that the stage of recording evidence before charge is yet to reach and therefore the said documents were also not produced along with complaint. He submitted that, it is not necessary to submit/file documents alongwith the list of documents at the time of presenting the complaint and it can be filed at “any stage” of trial and more particularly before recording of evidence. He therefore prayed that, the impugned Orders may be quashed and set aside.

5] Section 294 of the Cr. P.C. categorically stipulates, where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the

genuineness of each such document.

It is by now well settled that, Section 294 provides for admission of certain documents in evidence without formal proof. This section has been introduced to shorten up the proceedings where the genuineness of a document filed by a party is not disputed then such document shall be read in evidence, in enquiry or trial without the proof of signature of the person who is purported to have signed it, unless the Court in its discretion requires such signature to be proved. Such a document shall be read as substantive evidence to prove a fact and it shall not be the evidence meant to contradict or corroborate the statement. But it is equally well settled that the said documents must be produced on record at the first instance or latest before taking of cognizance.

6] It has been held by various High Courts that, the legislature has not put any limitation as to at what stage the provisions of Section 294 are to be followed. However bare perusal of Section 294 of Cr. P.C. would clearly indicate that, the applicant at the time of filing of the complaint ought to have filed a list of such documents in support of his contention and also ought to have annexed the said documents alongwith the complaint and the applicant cannot be permitted to raise a spacious plea

that he will file documents “at any stage” of the trial i.e. initially at the time of institution of complaint and/or at the time of recording of the evidence. Thus it is clear that, the purpose of Section 294 of Cr. P.C. is to make aware other side of the documents on which prosecution or the accused is placing reliance in support of its case and no format proof of certain documents is necessary in that behalf. What is contemplated under Section 294 of the Cr. P.C., is production of documents alongwith a list thereof and not mere list of documents without annexing the documents on which the prosecution or accused is placing its reliance thereby calling upon the other side to admit the genuineness of the said documents. By now it is the well settled position of law that accused person cannot be surprised at a last moment by producing document which do not form part of either chargesheet or complaint at the time of taking cognizance.

7] In the present case, the applicant did not annexe said documents to the complaint on which he has placed reliance at the time of its filing and therefore the applicant cannot be now permitted to file the said application/Notice under Section 294 of Cr. P.C., calling upon the other side, either to admit or deny the genuineness of the documents which are simplicitor mentioned in the list as “Annexure-A”.

8] In view thereof, I find no error either in law or on the facts in the impugned Orders passed by the learned Metropolitan Magistrate, 6th Court, Mazgaon, Sewree, Mumbai.

Application is accordingly dismissed.

(A.S.GADKARI, J.)

