

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.535 OF 2017

Jayesh Shah ... Applicant
Vs.
M/s. Visa Syndicates and others ... Respondents

Mr. Jayesh Shah, Applicant in person.
Ms Rita Jain, APP for Respondent-State.

CORAM : R. G. KETKAR, J.
DATE : JULY 17, 2017

P.C. :

As the regular Court presided over by Hon'ble Mr. Justice A. K. Menon has passed "Not Before Me" order, the applicant has moved this Court as per the administrative order passed by the Hon'ble the Chief Justice.

2. Heard Mr. Shah, Applicant in person and Ms Jain, learned APP for respondent-State at length.

3. By this Application under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), applicant has challenged the orders dated 13.04.2017 passed by the learned Metropolitan Magistrate, 6th Court, Mazgaon at Sweree, Mumbai in (a) an application below exhibit-13 in C.C.No.325/SW/2006, C.C.No.326/SW/2006 and C.C.No.328/SW/2006 below exhibit-13 as also an application below exhibit-12 in C.C.No.327/SW/2006. By these orders, the learned Magistrate rejected the applications made by the applicant / complainant for issuing summons or requisition for production of documents listed at exhibit-A annexed with the application.

4. In support of this Application, Mr. Shah submitted that

complaints are instituted by the applicant herein under Section 420 read with Section 34 Indian Penal Code, 1860 (for short 'I.P.C.'). Applicant has also instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act') and the same are pending before the same Court namely, 6th Court, Mumbai. He, therefore, filed applications under Section 91 of Cr.P.C. inter alia praying for ordering or summoning or directing production of the documents referred in paragraph 14-A(i) to (iii). By the impugned order, the learned Magistrate rejected the applications on the ground that in the application, no averments are made as to whom Court has to issue summons to produce relevant documents. In other words, the direction for production of documents is to be issued against whom is not specified.

5. In my opinion, the applications made by the applicant / complainant under Section 91 were wholly uncalled for. Admittedly, the applicant has instituted complaints under Section 420 read with Section 34 I.P.C. and other set of complaints under Section 138 of the Act. Both the set of complaints are pending before the same Court. The applications were made under Section 91 in complaints filed under I.P.C. Instead of filing applications under Section 91, applicants should have requested the learned Magistrate who is also seized of the complaints filed under Section 138 for production of documents filed in the complaints under Section 420 read with Section 34 I.P.C. In view thereof, no case is made out for interfering with the impugned order. Application fails and the same is dismissed reserving liberty to the applicant to file application before the learned Magistrate calling for the documents filed in complaints filed under Section 138 of the Act. Order accordingly.

(R. G. KETKAR, J.)