

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

WRIT PETITION NO. 3300 OF 2017

Bunty Shankarlal Chugh	.. Petitioner
<i>Vs.</i>	
The State of Maharashtra & Anr.	.. Respondents

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Mr.Mohammed U. Kazi, Advocate for the Petitioner.
Mr.A.R. Kapadnis, APP for the Respondent – State.
Mr.Vinod Tayade, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 28, 2017.

P.C. :

The petitioner has challenged the order dated 5th July, 2017 passed by the J.M.F.C., Ulhasnagar. By the aforesaid order, the informant was allowed to adduce secondary evidence in respect of documents at Serial Nos.9 to 16, referred to in Exhibit - 86. It was also observed that the accused is at liberty to cross-examine the informant on the point of adducing secondary evidence.

2 The prosecution preferred an application vide Exhibit-85 and it was prayed that the documents mentioned in

the said application may be allowed to be produced. The said application was preferred under Section 294 of Cr.P.C. The Court by order dated 5th July, 2017 allowed the application and directed that the prosecution is at liberty to prove the documents from serial nos. 9 to 16 of Exhibit - 86 as per the provisions of Indian Evidence Act.

3 The prosecution vide Exhibit-88 had preferred application under Section 65 of the Indian Evidence Act for adducing secondary evidence with reference to the documents at serial nos. 9 to 16 which were mentioned in Exhibit - 86. The learned J.M.F.C. by order dated 5th July, 2017 referred to hereinabove passed the order allowing secondary evidence with liberty to the accused to cross-examine.

4 Learned counsel for the petitioner submitted that these documents were not part of the charge-sheet and the prosecution is trying to introduce a new case. It is submitted that the prosecution cannot be allowed to adduce secondary evidence of the said documents which are not concerned with the present case.

5 Perused the documents on record. The trial Court had allowed the application for production of documents vide order dated 5th July, 2017 and subsequently the prosecution was allowed to adduce secondary evidence since the documents are in the custody of the Court in another proceedings. The trial Court has reserved the right of accused to cross-examine the informant on account of secondary evidence. The trial Court also observed that the prosecution has liberty to prove the documents from serial nos. 1 to 16 as per the provisions of Indian Evidence Act. No prejudice would be caused to the accused as the accused will have right to cross-examine the witnesses on the said documents. The prosecution has already examined three witnesses and in the event the accused intends to recall the witnesses which is already examined qua aforesaid documents, liberty is required to be granted to prefer such an application.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Writ Petition stands dismissed;
- (ii) It is clarified that in case the defence intends to recall the witnesses who are already

examined by the prosecution, after the production of the documents at serial nos. 9 to 16 in Exhibit-86, or after prosecution adduces secondary evidence in respect to the said documents, the petitioner will be at liberty to prefer such an application before the trial Court which will be considered by the trial Court in accordance with law.

(PRAKASH D. NAIK, J.)