

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR**

CRIMINAL WRIT PETITION NO.113 OF 2016

Mr Sudhir S/o Niranjan Nayak,
Aged about 44 years, Occ. Business,
R/o 302, Chandan Nagar,
Nagpur

..PETITIONER

VERSUS

Mr Krishna S/o Kanhaiyalal Mandhana,
The Proprietor/Partner,
M/s Arti Engineering Company,
having its Registered Office,
Near Gandhibagh,
Near Tahsil Police Station,
Nagpur

..RESPONDENT

Mr Mahesh Mourya, Advocate for petitioner;
Mr S. Bhutada, Advocate holding for Mr S.V. Mundada, Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 23rd March, 2017

ORAL ORDER

By the present petition, the petitioner – original complainant challenges the order dated 16th November, 2015, passed by 18th Joint Judicial Magistrate First Class and 138 Special Court, Nagpur, below Exh. 142, in Summary Criminal Case No.5979 of 2009, whereby prayer for grant of permission to tender additional evidence, in view of provisions of Section 311 of the Code of Criminal Procedure came to be rejected.

2. The application Exh.142 moved by the petitioner – complainant is objected by the respondent – accused on the following grounds :-

(2)

- (a) that the evidence in the matter is already recorded;
- (b) the application is moved with an intention to fill in the lacuna, though the fact that is formed to be the basis for moving the application under Section 311 of the Code of Criminal Procedure was well within the knowledge of the petitioner – complainant.

3. In the light of the prayer made in application Exh.142 before the learned Court below, if the above referred resistance by the respondent – accused is analyzed, it is required to be noted that what is sought to be placed on record by the petitioner is the clarification *qua* his status. If the said fact is permitted to be brought on record by virtue of granting permission under Section 311 of the Code of Criminal Procedure, in my opinion, the respondent – accused will have every opportunity to meet the said evidence in cross-examination. Apart therefrom, the analysis of admissibility of such evidence will be available to the learned Trial Judge at an appropriate stage.

4. In view thereof, the order impugned cannot be sustained. In the result, the order dated 16th November, 2015, passed by 18th Joint Judicial Magistrate First Class and 138 Special Court, Nagpur, below Exh.142, in Summary Criminal Case No.5979 of 2009, is quashed and set aside. Application Exh.142 stands allowed.

(3)

5. It is clarified that admissibility of such evidence as would be brought on record by the petitioner will be subject to scrutiny by the learned Trial Judge.

6. With the above observations, Criminal Writ Petition stands allowed.

(N.W. SAMBRE, J.)

amj