

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

CRIMINAL APPLICATION NO. 438 OF 2018

Usha Arora ... Applicant

Versus

Mr. Parag Pankaj Thakker & Anr. ... Respondents

Mr. D. M. Galani for Applicant.

Mr. S. S. Pednekar, APP for State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 27, 2018.

P.C. :

. Heard Mr. Galani, the learned Counsel for Applicant - Original Complainant in a Complaint for an offence punishable under Section 138 of the Negotiable Instruments Act.

2. During the course of recording of evidence, Accused moved an application under Section 91 of the Code of Criminal Procedure, which came to be allowed by the impugned order dated 13th March 2018, thereby the Applicant – Original Complainant was directed to produce bills or vouchers or invoices or receipts of transaction of gold jewelry,

stating detail source of cash amount of Rs. 20,00,000/- before the court of learned Magistrate.

3. The learned Counsel would urge that the liability was admitted by the Accused person. As such, Applicant cannot be put to notice for production of the documents. He would then urge that income tax returns were produced, which were returned by the learned Magistrate, in which already a reference was made to the issue of jewelery. He submits that the order impugned is not sustainable, as it has come in the evidence of Applicant – Complainant that she is not armed with any of the bills, vouchers, invoices or receipts which are directed to be produced.

4. Heard learned APP for the Respondent – State.

5. Having appreciated the evidence of the Applicant – Complainant and the Application under Section 91 of the Code of Criminal Procedure, in para no. 6 of the impugned order it is noted that Applicant was put to a question whether she is ready and willing to produce the details of the sale of jewelery, to which she gave evasive reply.

6. The fact remains that the income tax return, even if are produced, those are claimed to be not admitted by the Applicant, as those are produced later in point of time. In the aforesaid background, even if it is presumed as stated by the Applicant that she is not in possession of the documents, the failure to produce such documents or failure to comply with the impugned order will leave the Court to draw appropriate inference.

7. It is to be observed that such inference will not be isolated, based on the act of non-production or non-compliance of the order impugned, but will be taking into consideration the oral evidence brought by the parties before the Court and the discharge of burden by the Accused in the wake of presumption in favour of holder of cheque i.e. Applicant.

8. For the aforesaid reasons, no interference is warranted in the impugned order. The Application fails.

9. As such, the Criminal Application is dismissed.

(NITIN W. SAMBRE, J.)