

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

CRIMINAL APPLICATION NO. 757 OF 2016

Shri Nilay Mukesh Ojha

An adult Indian Inhabitant

residing at Flat No. 302, Jai Gauri

Building, Opp. Renaissance Club

Versova Link Road, Four Bungalows,

Andheri (West), Mumbai – 400 058

... Applicant

(Org. Accused)

VERSUS

1. Ucil Synchem Pvt. Ltd.

Through its Director Mr. Saurin

K. Shah, having office address Flat

No.4, Ground Floor, Jai Mahal

Building, Plot No. 57, Oza Road,

Behind CCD, Sion (West),

Mumbai 400 022.

2. State of Maharashtra

... Respondents

Mr. Manoj S. Mhambrey for Applicant.

Mr. Ashok Wanwari for Respondent No.1.

Mr. S. S. Pednekar, APP for Respondent No.2 – State.

CORAM : NITIN W. SAMBRE, J.
RESERVED ON : APRIL 06, 2018.
PRONOUNCED ON : MAY 03, 2018.

P.C. :

. This Criminal Application is by the Applicant - Original Accused No. 2, who is son of deceased Accused No.1 – Mukesh Keshavlal Ojha in Criminal Case No. 3137/SS/13 preferred by the Respondent No. 1 for an offence punishable under Section 138 of the Negotiable Instruments Act.

2. It is alleged against the Applicant – Accused that his father Accused No.1 was ex-employee of the Complainant – Company and borrowed sum of Rs. 6,00,000/-. Towards repayment, cheque came to be issued for an amount of Rs. 6,00,000/- dated 20th June 2013 which came to be dishonoured, as such the complaint in question.

3. In the said Complaint Case, during the course of recording of evidence, Application (Exhibit – 17) came to be moved objecting the exhibition of documents which came to be rejected by the learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai vide impugned order dated March 23, 2016.

4. When the evidence in the said complaint case was recorded by the learned Magistrate vide Application (Exhibit – 17), the Applicant – Accused raised objection to exhibiting and admissibility of the documents which were tendered along with the list of the documents.

5. Since the said objection (Exhibit – 17) is rejected, the present Criminal Application.

6. The learned Counsel for Applicant – Accused would urge that the admissibility and exhibition of the documents is required to be decided at the stage of recording of evidence. According to him, the objections are overruled and rejected by the learned Magistrate contrary to the procedure prescribed under the Evidence Act. He would then urge that the admissibility of the documents has far reaching effect on his defence and as such said issued is required to be decided at the stage of recording of evidence itself. As such, according to him, the order impugned dated 23rd March 2016 is not sustainable.

7. The learned Counsel for Applicant – Accused would try to draw support from the Judgment of this Court in the matter of *Smt. Jyoti*

*w/o Vasant Rao Butle V/s Mrs. Varsha Aniruddha Bansod*¹ and other similar Judgments.

8. The learned APP opposed the claim and submits that the order is just and proper. The learned Counsel for Respondent No.1 – Original Complainant submits that it is premature at this stage to infer that the documents are illegally admitted in the evidence when such issue can be raised at the time of final hearing of the complaint case.

9. Considered the rival submissions.

10. The nature of documents as were tendered by the Complainant along with list (Exhibit – 13) are the Resolutions. Whether the document is properly proved or not, and whether it is admissible in the evidence or not, can be gone into at the stage of final hearing of the trial. Appropriate support can be drawn from the Judgment of Apex Court, particularly the para Nos. 12, 13 and 15, in the matter of *Bipin Shantilal Panchal V/s State of Gujarat and Another*² as follows :

“12. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding

¹ 2008(6) ALL MR 217

² AIR 2001 Supreme Court 1158

admissibility of any material in evidence the Court does not proceed further without passing Order on such objection. But the fall out of the above practice is this : Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional Court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher Court may have to send the case back to the trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

13. When so recast, the practice which can be a better substitute is this : Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part

of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.

15. We, therefore, make the above as a procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.”

11. So far as the Judgments cited by the Applicant – Accused are concerned, same are based on the provisions of the Code of Civil Procedure and as such are not applicable to the facts of this case.

12. Keeping the issue *qua* the objection to be raised, about receiving the documents in evidence, proof in support thereof to be raised at the time of final hearing of the trial in the wake of law laid down by the Apex Court in the matter of Bipin Shantilal Panchal (*cited supra*), in my

opinion, no interference is warranted. The Criminal Application sans merit.

13. As such, Criminal Application is dismissed.

(NITIN W. SAMBRE, J.)