IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION No. 3043 OF 2017

M/s. Global Exim through Piyush Thakkar ...Petitioner
Vs.
The State of Mahrashtra and Ors. ...Respondents

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Mr. Girish Agrawal for Petitioner in WP No. 303 of 2017
Ms. Mallika A. Ingale for Applicant in APL 574 of 2017 and APL No. 586 of 2017.
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CORAM : NITIN W. SAMBRE, J.
DATE: MARCH 12, 2018

P.C.

1. This petition is filed by the Complainant in Complaint Case No. 2856/SS/2012 pending on the file of the Learned Metropolitan Magistrate, 56th Court at Mazgaon, Mumbai against which the Accused moved an application summoning the defence witnesses, which came to be allowed in appeal vide impugned order dated June 28, 2017. The Learned Magistrate by virtue of impugned order, issued summons to the Officer of Range -13(1) of Income Tax Department, Ayakar Bhavan, Mumbai for production of income tax returns along with annexures, which were submitted by the Complaint for the assessment years 2011-12 to 2015-16.

2. The learned counsel for the Petitioner would urge that since the trial has reached at the conclusion stage, the Court ought not to have permitted for summoning of witnesses at the behest of defence particularly when the High Court in Criminal Writ Petition No. 1371 of 2015 on 28th October, 2015 has made an observation about the conduct of the Respondent -Accused of delaying the trial and defeating the very object of summary trial. He would urge that the transaction is of the period of 2011 and he has no objection for production of the documents for the said year. However, summoning the documents for the subsequent financial years and making known the business of the Petitioner to the public at large, will adversely affect his business. He would then urge that no reasons whatsoever have been recorded by the Trial Court while permitting the accused to produce the defence witness. According to him even assuming without admitting that the alleged transaction between the accused and the Petitioner is not reflected in the income tax returns for the assessment year 2012-13 onwards, still the Respondent -Accused cannot draw any benefit out of the same, as the said issue is between the Revenue and the Assessee. Delay, if any, under the provisions of the Income Tax Act will dealt with by the Revenue Authorities independently and the Respondent Accused cannot be benefited out of it.

3. The Learned counsel for the Respondent -accused while putting his submissions, would urge that the order passed by the Learned Trial Court was in the interest of justice so as to give complete opportunity to the accused to put forth his defence in a criminal trial. She submits that what is being permitted is the production of the income tax returns for the assessment year 2011-12 to 2015-16. She then submits that it is always open for the present Respondent -Accused to strengthen his defence before beginning of the final hearing of the trial. She submits that at the most, the Respondent can be put to some conditions.

4. Considering the rival submissions, the transaction in question of 2011 and the consent given by the present Petitioner that he has no objection for production of income tax returns of 2011-12, this Court is taken note of it.

5. It is in the interest of justice, it appears that the Court has permitted the Applicant to establish his defence i.e. production of the income tax returns for the assessment years 2011-12 to 2015-16. It appears that there is an agreement between the parties dated 23rd August, 2011 at Exhibit 21 which is posted into service for the purpose of establishing that the production of Income Tax Returns so as to demonstrate the receipt of amount.

5. From the aforesaid, it reveals that the intention of the Respondent

accused was right to establish his production of the documents as ordered by the trial Court. In my opinion, a complete opportunity of referring his case be given to the Accused person in the criminal trial, on putting a condition that that the Accused shall pay the costs of Rs.10,000/- to the Complainant and the same to be deposited in the Trial Court within a period of 15 days from today.

6. With the above observations, nothing survives in the petition. The writ petition is dismissed.

[NITIN W. SAMBRE, J.]