

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

CRIMINAL APPLICATION NO.830 OF 2017

V.K.Kulur ...Applicant
Versus
Venus Trading Company and Anr. ...Respondents

Mr.Kafil Ahmed Khan, for the Applicant

Mr.Pranesh J. Gada a/w Mr.Rushikesh Salkar i/b Dhanuka and Partners, for
the Respondent No.1.

Mr.Yogesh Dabke, A.P.P for the Respondent No.2-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th FEBRUARY, 2018

P.C. :

1. Both, learned counsel for the applicant as well as learned counsel for the respondent no.1 agree that the impugned order dated 3rd January, 2017 passed by the learned Metropolitan Magistrate, 6th Court, Mazgaon at Sewree, Mumbai, below Exhibit-1, in C.C.No.1588/SS/2017, was contrary to the order passed by this Court (Coram:Smt.R.P.SondurBaldota, J.) vide order dated 19th January, 2009, in Criminal Writ Petition No.2459 of 2008 with Criminal Writ Petition No.2460 of 2008.

2. Pursuant to the order dated 19th January, 2009, passed by this Court, the affidavit of the Examination-in-Chief tendered by the respondent no.1 and taken on record by the trial Court on 24th July, 2008, was directed to be returned to the complainant alongwith the documents annexed therein. Pursuant to the order, the affidavit of the Examination-in-Chief of the respondent no.1 was returned back to the complainant alongwith all documents and the trial Court vide order dated 29th July, 2016 directed the respondent no.1-complainant to adduce oral evidence. Admittedly, no application was filed either by the applicant or the respondent no.1-complainant, however, despite the same, the learned Magistrate passed the impugned order dated 3rd January, 2017. The said order is clearly contrary to the order passed by this Court (Coram:Smt.R.P.SondurBaldota, J.) vide order dated 19th January, 2009.

3. It is informed that the respondent no.1, pursuant to the said order dated 3rd January, 2017, has tendered his affidavit on 16th January, 2017 alongwith the documents. The Trial Court shall return the said affidavit alongwith documents to the respondent no.1-complainant. Needless to state, that the respondent no.1-complainant shall now step-in

the witness box and give oral evidence as well as tender documents, on which he proposes to rely, in accordance with law.

4. Accordingly, the Application is allowed. The impugned order dated 3rd January, 2017 passed by the learned Metropolitan Magistrate, 6th Court, Mazgaon at Sewree, Mumbai, below Exhibit-1, in C.C.No.1588/SS/2017, is quashed and set aside. The trial Court shall return the affidavit of evidence alongwith documents filed by the respondent no.1-complainant, to the Respondent No.1. The respondent no.1-complainant shall step-in the witness box and adduce oral evidence. The respondent no.1, is also at liberty to tender the documents, on which he proposes to rely, whilst giving oral evidence, in accordance with law.

5. Application is allowed and disposed of in above terms.

6. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.