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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3261 OF 2017

CRIMINAL WRIT PETITION NO.3262 OF 2017

Altaf Yusuf Naik

..Petitioner.

V/s.

The State of Maharashtra & Anr.

..Respondents.

Mr.Pramod Patil for the petitioner in both the petitions.

Mrs.M.R.Tidke, APP for the respondent-State.

Mr.Bhavesh Parmse i/b. Devmani Shukla for respondent No.2 in both the petitions.

CORAM: NITIN W.SAMBRE, J.

DATE : APRIL 23, 2018

PC.:-

Heard Mr.Patil, the learned counsel for the petitioner, original accused, who is convicted for an offence punishable under section 420 of the Indian Penal Code. Applicant-aaccused is also facing complaint case for an offence punishable under section 138 of the Negotiable Instruments Act, 1881 ('the N.I. Act' for short).

2. At the stage of recording of examination-in-chief of the

complainant, pursuant to a prayer made by the public prosecutor, the learned Magistrate allowed the application for production of documents though objected by the petitioner. As such, this petition.

3. Relying upon the judgement of the Apex Court in the case of *R.Sarala V/s. T.S.Velu and others*¹, he would urge before this Court that in view of the scheme under Chapter XII of the Code of Criminal Procedure, the documents which are not coming from the custody of the Investigating Officer and which should have been part and parcel of the charge-sheet, cannot be accepted and included in trial at a later stage. According to Mr.Patil, if the petitioner is permitted to cross-examine the witness on the aforesaid documents, which are permitted to be produced, the petitioner will be in a awkward situation. If the cross-examination of the witness is permitted on the basis of documents which are produced as evidence, it will be amounting to a case of admission and waiving his statutory rights. He would then urge that the recourse that should have been taken by the prosecution was to seek leave of the Magistrate to file a separate charge-sheet.

4. The learned counsel for respondent No.2 opposed the claim and submits that the petitions are premature as issue can be

¹ (2000) 4 Supreme Court Cases 459

raised at the appropriate stage of the above proceedings.

5. Considered rival submissions.

6. It is really difficult, from perusal of the application for production of documents and that of reply filed by the petitioner, to infer that the documents are coming from the custody of the complainant. That being so, since the petitioner-accused will have a chance to establish his defence in the backdrop of the documents which are sought to be relied upon, even if same are coming on the record of the Magistrate from the custody as alleged. Apart from above, the fact remains that the examination-in-chief of the complainant is going on. It is always open for the present petitioner-accused to establish non compliance of provisions of Chapter XII of the Code of Criminal Procedure.

7. The preposition of law cited before this Court in *R.Sarala (cited supra)* no doubt creates an embargo on the powers of Magistrate in accepting or entertaining the documents. However, what is required to be appreciated is, it was the case of the petitioner before the learned trial Court that the documents were coming from the custody of the complainant. Rather, the contents of the

application granting production of documents *prima facie* leads this Court to the conclusion that the documents were coming from the custody of the prosecution. That being so, the judgment in the matter of *R.Sarala (cited supra)* can be hardly of any assistance.

8. In view of the judgment in the matter of *Bipin Shantilal Panchal V/s. State of Gujarat*², keeping the issue as regards production and admissibility of documents open to be gone into at appropriate stage, I hardly notice any cause which warrants interference.

9. One more aspect of which this Court must take note of is, the prosecution is under section 138 of the N.I. Act. As such, the complainant could produce the documents from his custody which is subject to further scrutiny in the light of provisions of the Evidence Act.

10. In view of above observations, I hardly notice any perversity in the order which warrants interference. Both the petitions are dismissed.

(NITIN W.SAMBRE, J.)

² (2001) 3 Supreme Court Cases 1