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

WRIT PETITION NO.3764 OF 2018

Dilip R. Agrawal

..Petitioner

Vs

Silverdale Finstock Private Limited & Anr.

..Respondents

Mr. Sujit Pathak for Petitioner.

Mr. O.S. Kutty with Ms. Vasudha Kale for Respondent No.1.

Mr. A.R. Patil, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 26th September 2018.

P.C.:

1] By the present petition under Article 227 of the Constitution of India, the petitioner, original accused has impugned the Order dated 18th July 2018 passed below Exhibit 108 by the learned Metropolitan Magistrate, 48th Court, Andheri, Mumbai in C.C. No.2765/SS/2010, allowing the said application of the original complainant for issuance of witness summons to the Bank Manager/Authorised Officer of the Union Bank of India, Varsova Branch, Andheri (West), Mumbai.

2] Heard the learned counsel appearing for the petitioner, the learned counsel for respondent No.1 and the learned APP. Perused the

record.

3] The record indicates that, the respondent No.1 had instituted a complaint bearing No.2765/SS/2010 in the Court of Metropolitan Magistrate, 48th Court, Andheri, Mumbai under section 138 of the Negotiable Instruments Act against the petitioner which resulted into conviction of the petitioner by its Judgment and Order dated 17th July 2015 passed by the Metropolitan Magistrate, 48th Court, Andheri, Mumbai. In an appeal preferred by the petitioner bearing No.693 of 2015, the learned Additional Sessions Judge, Greater Mumbai by its Judgment and Order dated 21.4.2018 remitted the case back to the Trial Court for decision afresh according to law after consideration of entire oral and documentary evidence on record.

While passing such directions, the Appellate Court has reached to the conclusion which has been recorded in para-12 of the said Judgment and Order dated 21.4.2018, which reads as under:-

“In view of the submission made on behalf of the appellant as well as respondent No.1, as the documents are not considered by the learned Trial Court which are filed by the accused as discussed above, the matter needs to be remanded back for hearing and decision afresh according to law, after consideration of the entire evidence on record.”

4] After the matter is remanded back to the Trial Court, the petitioner filed an application below Exhibit 108 for issuance of witness summons to the Bank Manager/Authorised Officer of Union Bank of India, Varsova Branch, Andheri, Mumbai, with a view to produce document of account with respect to the dishonoured cheque in question. The said application has been allowed by the impugned Order 18th July 2018.

It is to be noted here that, disputed cheque in question has already been exhibited as Exhibit-13 on the record of Trial Court. As per statement of the learned counsel for the respondent No.1, with a view to have more clarity of Exhibit Nos.34, 78, 79, 80, 81, 82 and 86, the said witness is necessary to be examined. The learned counsel for the petitioner submitted that, the Appellate Court while remanding back the matter to the Trial Court has not observed/directed re-trial be conducted and it has only directed to hear the parties afresh, after considering the entire evidence on record and therefore the application filed by the petitioner below Exhibit 108 and the impugned Order passed thereon are bad in law.

5] As noted earlier, the aforesated documents are already exhibited on record of the Trial Court. The respondent No.1 is not

intending to adduce additional evidence. It is only for the purpose of clarity in the matter, the said witness is summoned. According to me, no prejudice would be caused to the petitioner, if the said witness is summoned to be examined to have clarity of the documents which are already on record. It is to be noted that, the said witness will not be permitted to adduce additional evidence which is not brought on record. The petitioner is having every right to cross-examine the witness in his defence.

6] After perusing the entire record and the impugned Order and in view of the peculiar facts of the present case, this Court is of the considered view that the Trial Court has not committed any error either in law or on facts while passing impugned Order dated 18th July 2018.

Petition is accordingly rejected.

(A.S.GADKARI, J.)