

Anand

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

WRIT PETITION NO. 4406 OF 2017

Sayyed Abbas Mohammed .Petitioner

Vs.

Prasad Anant Desai & anr. .Respondents

Mr. M. A. Khan, Advocate, for Petitioner

Mr. A. M. Pathan, Advocate, for the Respondent No. 1

Mr. H. J. Dedhia, APP, for the Respondent No. 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 08.02.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the Order dated 01.09.2017 passed by the learned Additional Sessions Judge, Thane below Exh. 24 preferred in Cri. Appeal No. 448 of 2013, by which the Petitioner's Application (Exh. 24) for leading additional evidence and production of documents came to be rejected.

3. Learned counsel for the Petitioner submitted that the learned Judge ought to have allowed the Application (Exh. 24) filed by

the Petitioner in the interest of justice and for a just decision of the case. He submitted that the documents, which the Petitioner intended to produce were handed over to the Advocate, however, the Advocate did not produce the said documents in the trial Court, due to oversight. He further submits that the Petitioner had laid the foundation for the said documents, when he examined himself as a witness after his statement under Section 313 of the Code of Criminal Procedure (for short 'Cr.P.C.') was recorded. Learned counsel for the Petitioner relied on the Judgments of the Delhi and Bombay High Court in the case of ***Charanjeet Gaba Vs. Arjun Lal Ahuja***, reported in ***ACD 2013 0 279*** and ***Sitaram Rangappa Kaushik Vs. Ukanda Bhika Jadhao***, reported in ***ALL MR(CRI) 2002 0 1867***.

4. Learned counsel for the Respondent No. 1 opposed the Petition and submitted that no interference was warranted in the impugned order.

5. Perused the papers including the impugned order.

6. The Petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act by the

learned Magistrate.

7. Being aggrieved by the Judgment and Order dated 25.09.2013 of conviction and sentence, the Petitioner filed an Appeal, being Cri. Appeal No. 448 of 2013 in the Court of the learned Sessions Judge, Thane in 2013. On 18.08.2016, the Petitioner filed an Application under Section 391 of Cr.P.C. and prayed that he be permitted to lead additional evidence and produce documents more particularly mentioned in the list annexed to the Application. The said Application was rejected by the learned Sessions Judge vide Order dated 01.09.2017. Hence, this Petition.

8. The case is of the year 2010 and the Petitioner was convicted in 2013. Although the Appeal was filed in 2013, it is only in 2016 that an Application (Exh. 24) was filed seeking permission to lead additional evidence and produce documents. A perusal of the evidence of the Respondent - Complainant shows that there is no suggestion made to him, in the cross-examination, that an amount was paid to him, towards his liability under the cheque in question. No doubt, the Petitioner in his evidence has mentioned various amounts given to the Petitioner and there is no cross-examination with regard to

the same by the Respondent, however, since the matter is pending before the Appellate Court, it is not necessary to go into the details of the merits of the matter. Suffice to state, that the power under Section 391 of Cr.P.C. is to be used sparingly and in exceptional cases. The present case, is not such one warranting interference under Section 391 of Cr.P.C.. The impugned order can neither be said to be perverse nor unsustainable warranting interference in writ jurisdiction.

9. Accordingly, the Petition is dismissed.

10. It is made clear, that the Appellate Court shall decide the case on its own merits uninfluenced by the observations made in this order.

All contentions of all the parties are kept open.

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

(REVATI MOHITE DERE, J.)