Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4842 OF 2017

Mehaboob Jamal Mulani .Petitioner

Vs.

The State of Maharashtra .Respondent

Mr. N. Y. Chavan, Advocate, for the Petitioner
Mr. H. J. Dedhia, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 23.02.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the Order dated 12.09.2017 passed by the learned Judicial Magistrate First Class, Tasgaon, District – Sangli below Exh. 23 in R. C. C. No. 98 of 2015, by which the prosecution's Application (Exh. 23) for producing the original tax receipts came to be allowed.

3. Learned counsel for the Petitioner submitted that the prosecution has not followed the procedure laid down under Section 173(8) of Cr.P.C.. He submitted that what was submitted with the

original charge-sheet were only the xerox copies of the tax receipts and that the original tax receipts were not filed by the prosecution. He submitted that now by filing an Application seeking to produce the original tax receipts, the defence of the Petitioner is likely to be prejudiced. He further submitted that the prosecution ought to have filed a supplementary charge-sheet under Section 173(8) of Cr.P.C. containing the original receipts.

4. Learned APP opposed the Petition. He submitted that no interference was warranted in the impugned order. He further submitted that a perusal of the index of the charge-sheet will show that all the said tax receipts were part of the charge-sheet and as such, the accused cannot claim that he was not aware of the said tax receipts. He submitted that by filing the Application, the prosecution was only placing on record the original tax receipts during the examination-in-chief of the Complainant. He submitted that hence, there was no question of filing a supplementary charge-sheet under Section 173(8) of Cr.P.C.., for placing on record the original receipts, as xerox of the said receipts are already a part of the charge-sheet.

5. Perused the papers as well as the impugned order. After the

commencement of the trial and when the first witness i. e. the Complainant was being examined, his examination-in-chief was deferred and the prosecution filed an Application seeking to produce certain original tax receipts. A perusal of the index of the charge-sheet shows that all the original tax receipts which were sought to be produced by the prosecution were already filed alongwith the charge-sheet and hence, the requirement of filling a report under Section 173(8) of Cr.P.C. does not arise. Similarly, the statements of the witnesses also show that they have given details of the very same tax receipts, which are sought to be produced (original) by the prosecution (the xerox receipts being part of the charge-sheet). It is not a case, where the receipts are being produced for the very first time and that the Petitioner was unaware of the same and hence, even the question of any prejudice being caused to the Petitioner – Accused, does not arise.

6. Under these circumstances, the impugned order cannot be faulted and hence, no interference is warranted in writ jurisdiction. It is always open for the Petitioner – Accused to cross examine the witnesses on the basis of the said receipts, which yet to commence.

7. Accordingly, the Writ Petition being devoid of merits and is

dismissed.

8. It is made clear that the observations made herein are *prima facie,* for deciding this Application and the trial Court shall conduct the trial and decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All contentions of all the parties are kept open.

(REVATI MOHITE DERE, J.)