nsc.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5308 OF 2017

M/s.Alpha Export
Proprietor: Hemant S. Jain ...Petitioner
Versus
State of Maharashtra and Anr. ...Respondents

Mr.Manish Bohra i/b A.S.Khan and Associates, for the Petitioner.

Mr.Yogesh Dabke, A.P.P for the Respondent No.1-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JANUARY, 2018

P.C. :

1. Heard learned counsel for the parties.

2. By this petition, the petitioner has impugned the order dated 4th December, 2017, passed by the learned Metropolitan Magistrate, 64th Court at Esplanade, Mumbai, by which the petitioner's application for issuing summons to the Chief Commissioner of Income Tax; the Registrar of Income Tax Appellate Tribunal (I.T.A.T) and for directing them to produce all documentary evidences in respect of the complainant-Yogesh J. Mehta in the ITA proceedings, came to be rejected.

3. Perused the papers. It is not in dispute that the evidence in the said case i.e. C.C.No.6165/SS/2012 (138 proceedings) was over in 2008 and the matter was posted for arguments. In 2008, the complainant moved an application and sought production of certain documents. The petitioner–accused also filed an application in 2008 and also sought production of complainant's documents. The learned Magistrate was pleased to reject both these applications vide order dated 15th February, 2008. Being aggrieved by the said order dated 15th February, 2009, the respondent no.2-complainant filed a Revision Application, being Criminal Revision Application No.200 of 2008, in the Sessions Court. The learned Additional Sessions Judge vide order dated 17th November, 2008 was pleased to allow the said Revision. The said order reads thus:-

> "Revision Application No.200/08 is allowed.
>
> The Order dated 15th February 2008 rejecting the applicant/complainant's application is hereby set aside.
>
> Ld. M.M. is directed to allow the applicant/complainant to produce documents which he proposed to produce by preferring application dated 29th January 2008.
>
> The applicant/complainant is directed to produce the documents which respondent/accused wanted him to produced under his application dated 5th February 2008.

> If the applicant/complainant failed to produce those documents, summons be issued to the concerned officer for production of those documents subject to law, if any, relating to privilege to withhold production of those documents.
>
> Ld. Trial Judge to give opportunity to both the parties to cross examine each other, if asked for...”

4. Pursuant to the said order dated 17th November, 2008, the complainant did not produce any documents mentioned in the petitioner's application despite stating that he will produce the same. Admittedly, the complainant did not produce any documents, pursuant to the said order dated 17th November, 2008. It appears that the petitioner filed an application in the interregnum for issuing summons to the officer of the Income Tax Department, which was allowed by the learned Magistrate. The said witness was not examined as the documents sought by the petitioner were not with him. Hence, in December, 2017, the petitioner again filed an application and prayed that summons be issued to the Chief Commissioner of Income Tax and the Registrar of Income Tax Appellate Tribunal and for a direction that the said witnesses be directed to produce all documentary evidence in respect of the complainant. The said application was rejected. As noted earlier, despite the order dated 17th November, 2008, the

respondent no.2 (complainant) has not produced any document nor has he produced any documents sought by the petitioner, despite agreeing to produce the same. Needless to state, that it is always open for the learned Judge to draw an adverse inference against the Respondent No.2 for failure to comply with the order dated 17th November, 2008. The 138 proceedings were filed in 2001 and till date have not seen the light of the day. The matter is posted for arguments tomorrow. No interference is warranted in the impugned order.

5. The Petition is accordingly dismissed and disposed of as such.

6. All contentions of all the parties are kept open.

REVATI MOHITE DERE, J.