

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1170 OF 2018

Mangala Sukhdev Jadhav
Age-53 years, Occ.: Housewife,
R/o. N-11, Navanath Nagar,
Hudco, Aurangabad.

... **Petitioner**

Vs.

Sangita Sudhakar Jadhav,
Age-48 years, Occ.: Housewife,
R/o. C/o. Suresh Wagh,
N-11, H 18, House No 8
Naganath Nagar,
Hudco, Aurangabad.

... **Respondent**

Mr. Gore Ravindra Vitthal, Advocate for the Petitioner.

CORAM : MANGESH S. PATIL, J.
DATE : 06.03.2019

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith.

2. The original complainant who has initiated a proceeding under Section 138 of the Cr.P.C. against the respondent has approached this Court invoking writ jurisdiction being aggrieved and dissatisfied by the rejection of her application (Exhibit-55) by the learned Magistrate which was preferred by her under Section 311 of the Cr.P.C.

3. I have heard the learned advocate for petitioner. The

respondent is duly served but has not appeared.

4. As can be seen from the record, in a complaint under Section 138 of the Negotiable Instruments Act the petitioner had filed an affidavit in lieu of her examination in chief (Exhibit-14). She was also cross-examined on behalf of the respondent. When she realised that the original important documents i.e. the cheque, legal notice, postal acknowledgment, bank memo were not exhibited, she filed an application (Exhibit-48) and requested the Magistrate to exhibit these documents which were already on record. The respondent opposed the application. By the order dated 05.04.2017 the Magistrate rejected the application inter alia on the ground that the contents of the documents were not proved.

5. Faced with the situation she preferred the application (Exhibit-55) under Section 311 of the Cr.P.C. seeking to recall herself obviously to enable her to get the original documents exhibited. The respondent opposed the application and by the impugned order the learned Magistrate rejected the application solely on the ground that since the application (Exhibit-48) filed by the petitioner seeking to exhibit the documents was already rejected by his learned predecessor, she could not have been allowed to step into the witness box once again under the provision of Section 311 of the Cr.P.C.

6. It is quite apparent that the learned Magistrate has not

decided the application (Exhibit-55) on its own merits and was apparently swayed away by the rejection of application (Exhibit-48), whereby the petitioner had requested to exhibit the documents.

7. It appears that the trial was at an initial stage and only the testimony of the petitioner who was the first witness on her behalf was recorded. Going by the affidavit of examination in chief, it appears that due to a mistake, she could not get the documents exhibited. Even her attempt to persuade the Magistrate to exhibit the documents had failed. Left with no other alternative she sought to invoke the powers vested in the Magistrate under Section 311 of the Cr.P.C. Since the trial was at an initial stage, it cannot be said that any prejudice was likely to be caused to the respondent-accused even if the petitioner was allowed to once again step into the witness box.

8. Procedure is handmaid of justice. Unless there is a demonstratable prejudice likely to be caused to the accused, the Magistrate ought not to have refused to exercise the discretionary power under Section 311 of the Cr.P.C. Being a matter under Section 138 of the N.I.A. Act one can easily comprehend the importance of getting the important documents i.e. the cheque, legal notice, postal acknowledgment, bank memo exhibited.

9. Taking into account the over all conspectus of the matter, the impugned order suffers from gross illegality and is arbitrary and

needs to be interfered with under the writ jurisdiction.

10. The writ petition is allowed. The Magistrate shall permit her to step into witness box to enable her to lead additional evidence obviously by extending an opportunity to the respondent to cross-examine her further.

11. The rule is made absolute in above terms.

(MANGESH S. PATIL, J.)