

Vidya Amin.

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

CRIMINAL WRIT PETITION NO. 991 OF 2019

Sapankumar Pramod Maskar ... Petitioner
VS.
Bhagwan Laxman Badgujar & Anr. ... Respondents

Mr. P. Banerjee, Advocate for the petitioner.
Mr. Sachin Punde, Advocate for respondent No. 1.
Ms. Veera Shinde, APP for the respondent no. 2/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 8th March, 2019**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. The petitioner/accused is facing charges under section 138 of Negotiable Instrument Act. Pending before the learned Judicial Magistrate First Class, Panvel, after recording of statement under section 313 of Cr. P.C., the petitioner/accused has moved an Application for recalling the complainant under section 311 of Cr.P.C. to prove the transactions of Rs.1,15,000/-. However, the said Application was rejected by learned Judicial Magistrate First Class by order dated 31st July, 2018.

3. The learned counsel for the petitioner/accused has paid Rs.10,000/-, Rs.5,000/- and Rs.1,00,000/- by depositing the said amount directly to the bank account of the respondent/complainant. He had produced three receipts with the stamp of the concerned branch of the bank, however, these three receipts were not exhibited. The petitioner/accused needs to prove these payments made by him to the complainant in his account directly. He, therefore, moved an Application under section 311 of Cr.P.C. for recalling the complainant, as he wants to put these three receipts to the complainant.

4. The learned counsel for the respondent/original complainant while opposing this Petition pointed out the order passed by the Revisional Court wherein the learned Sessions Judge in paragraph 10, has mentioned that the suggestions were given in the cross-examination of the complainant by the accused about the repayment of the entire amount by cheques.

5. Read the impugned orders. Considered the submissions. The payment of Rs.1,15,000/- cannot be proved through the

accused himself. I do not find any illegality in the reasoning given by the learned Judicial Magistrate First Class and also the learned Sessions Judge.

6. The learned counsel for the petitioner/accused submitted that the petitioner will move an Application under section 311 of Cr. P.C. for calling a bank personnel on the point of account statement of the complainant where the accused has deposited the amounts of Rs.10,000/-, Rs.5,000/- and Rs.1,00,000/-.

7. If such application is moved by the petitioner, then it is to be decided on merit by the learned Magistrate.

8. With this, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)