

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

CRIMINAL WRIT PETITION NO. 1760 OF 2019

Vinayak Madhukar Hogade

...Petitioner

Versus

Gopikishan Harikishan Daga

...Respondent

Mr. Vinod P. Sangvikar for petitioner.

Mr. Anand S. Patil for Respondent No. 1.

Mr. Vinod Chate, APP for Respondent/State.

CORAM : S. S. SHINDE, J
DATE : 5th July 2019.

P.C.

1. This petition takes an exception to the order dated 8th March 2019 passed below Exhibit-26 in Summary Criminal Case No. 67 of 2017.

2. Learned counsel appearing for the petitioner invites attention of this Court to the application filed by the petition on 26.02.2019 and submits that the said application was filed with prayer seeking direction to the complainant to produce all the documents mentioned in the said application. It is submitted that those documents are necessary for proper adjudication of the pending proceedings before the concerned Court. It is the defence taken by the petitioner that, petitioner has not received delivery of goods from the complainant and therefore, to find out as a matter of fact whether the complainant purchased the said goods, which are alleged to have been supplied to the petitioner. It is submitted that similar case i.e. SCC No.

1283/2016 in similar facts situation, the concerned court has allowed the application and directed the complainant to produce the documents, if those are in possession of the complainant. Learned counsel appearing for the petitioner relying upon the pleadings in the petition, grounds taken therein and contents of the application submits that, petition deserves to be allowed.

3. On the other hand learned counsel appearing for respondent submits that, it is choice of the complainant to produce necessary documents in support of his averments in complaint. The complainant cannot be forced to place on record the documents to enable the accused i.e. petitioner herein to prove his defence. It is submitted that the petitioner by filing various applications trying to prolong the proceedings pending before the Trial Court. It is submitted that, the Trial Court has taken serious note of the fact that the petitioner is trying to prolong the pending proceedings and therefore, rejected the application filed by the petitioner.

4. Upon appreciating rival contentions and perusal of grounds taken in the application which was filed before the Trial Court, and annexures to the writ petition and the order passed by the concerned Court and reasons assigned therein, this Court is of the opinion that, the Trial Court is justified in rejecting the application filed by the petitioner. In case the complainant fails to produce necessary documents in support of the averments in the complaint,

the petitioner will get the benefit. However, to prove the defence of the petitioner the complainant cannot be compelled to produce documents on record. Though in similar case, the Magistrate allowed the application however, the Magistrate observed that complainant to produce documents if those are in his possession. Therefore, ultimately it was left to the complainant whether to produce such documents or not? The fact that the proceedings before the Trial Court are pending for more than two years is not in dispute. For the aforesaid reasons, I am not inclined to entertain this petition, hence writ petition stands rejected.

[S. S. SHINDE , J]