

Vidya Amin.

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

CRIMINAL WRIT PETITION NO. 3602 OF 2014

Dattatraya Nana Ugale ... Petitioner

VS.

The State of Maharashtra & Ors. ... Respondents

Mr. Saurab Butala i/b. Harshad A. Sathe, Advocate for the petitioner.

Mrs. Veera Shinde, APP for the respondent/State.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 13th February, 2019

P.C. :

In this Petition, notice is served on respondent No. 2. The record shows that respondent no 2-Sopan Sandipan Kadam (complainant) was served on 26th July, 2016. However, none present for respondent No. 2.

2. In the present case, respondent No. 2/complainant has filed criminal case against the present petitioner/accused under section 138 of Negotiable Instruments Act, which is pending as C.C. No. 1034/2008 on the file of Judicial Magistrate First Class, Satara. The evidence in the said case is over. When the matter was fixed for recording of statement of the accused under section 313 of Cr.

P.C., he moved an application on 15th March, 2013 for production of document, i.e., bank return memo, which is to be taken on record. The said Application was allowed and production of document was allowed by Judicial Magistrate First Class, Satara by order dated 5th April, 2013. The said order is under challenge in this Petition. Thereafter the complainant moved the Application for examining the bank officer. Under Exhibit 73, the said Application was rejected by order dated 12th April, 2013 by the learned Judicial Magistrate First Class, Satara. The said order was challenged in Revision Application No. 48 of 2013 before the learned District Judge, Satara. The learned 3rd Additional Sessions Judge, Satara allowed the said Revision Application by order dated 18th June, 2014. Hence, the said order and order dated 5th April, 2013 both are challenged in this Writ Petition by the accused.

3. The learned counsel for the petitioner/accused submitted that the order rejecting the Application of giving permission to witness bank officer was rightly rejected by the learned Judicial Magistrate First Class, Satara. Though the said order is an interlocutory order and Revision was not maintainable, the learned Sessions Judge entertained the said Revision Application and

allowed the same. Hence that order is challenged. He further submitted that after recording of the entire evidence, the complainant filed Application for production of documents, i.e., bank return memo with the intention to fill up lacuna in the case of the prosecution which may wash out the cross-examination.

4. None present for the respondent no. 2/original complainant. Perused all the documents before this Court and considered the submissions and documents. The complainant has mentioned about the dishonour of the cheque and the intimation given by the bank, of which he had knowledge about dishonour of the cheque. Under such circumstances, bank return memo cannot be said as doctored document but it can only be a piece of corroborative evidence. Hence, the view taken by the learned Judicial Magistrate First Class that due to inadvertence, the said document was not placed on record is correct and the order of allowing the said document to be taken on record cannot be fault with. The said order is maintained. The documents can be produced on record.

5. The order dated 5th April, 2013 passed by the learned

Judicial Magistrate First Class, Satara is hereby maintained. However, the order dated 18th June, 2014 passed by learned 3rd Additional Sessions Judge, Satara of allowing the Revision Application is hereby set aside and quashed on the ground of maintainability, as it is an interlocutory order. The trial Court to proceed with the trial, as it is part heard and pending since 2014. The matter is made time bound and it is to be concluded on or before 31st May, 2019. Parties to cooperate. The matter to be taken on the file of concerned Judicial Magistrate First Class, Satara on 25th February, 2019 at 11.00 a.m. The respondent no. 2/complainant is to be informed about this order by issuing notice.

6. Writ Petition is partly allowed.

(MRIDULA BHATKAR, J.)