

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.5182 OF 2019**

**NITYANAND GANPAT YADAV**

**)...PETITIONER**

**V/s.**

**THE STATE OF MAHARASHTRA**

**)...RESPONDENT**

Mr.Tapan Thatte, Advocate for the Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 14<sup>th</sup> OCTOBER 2019**

**ORAL JUDGMENT :**

1            Heard. Rule. Rule made returnable forthwith by consent of parties.

2            By this petition, the petitioner/accused is challenging the order dated 20<sup>th</sup> September 2019 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai,

on Exhibit 200 during the course of recording deposition of Defence Witness No.1 Rupawati Gopal Naidu. By this order, the learned trial court had exhibited the document i.e. the Leave and License Agreement just for the purpose of identification of the document.

3           The learned counsel for the petitioner argued that the said document is duly proved by the defence witness and therefore, the learned trial court ought not to have exhibited it only for the purpose of identification. He submitted that on proof of contents of the Leave and License Agreement, Exhibit 201, apart from proof of signatures of the parties thereon, the learned Sessions court ought not to have marked it only for the purpose of identification. The learned APP conceded to the submissions of the learned counsel for the petitioner and submitted that as the agreement is duly proved, the learned trial court ought to have exhibited it as the matter on it is proved.

4           I have considered the submissions so advanced and perused the impugned order passed by the learned Additional Sessions Judge during the course of recording of evidence of the defence witness.

5           The learned trial court has not refused to mark as exhibit the Leave and License Agreement attempted to be proved by defence witness Rupawati Gopal Naidu on the ground that the said document is required by law to be attested. Evidence of Defence Witness No.1 Rupawati Naidu shows that she has proved signatures on the Leave and License Agreement. She herself is a party to that agreement and the other party is the petitioner/accused, who sought to prove the said Agreement through the said defence witness. Contents of that agreement are also seen to have been proved by evidence of Defence Witness No.1 Rupawati Naidu. Therefore, the learned trial court was not justified in marking the said Leave and Licence Agreement dated 5<sup>th</sup> June 2015 as exhibit only for the purpose of identification. The writ petition, therefore, deserves to be allowed and as such, the order

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**ORDER**

- i) The petition is allowed.
- ii) Rule is made absolute in terms of Prayer Clauses (a) and (b).

**(A. M. BADAR, J.)**