

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5074 OF 2019

**PROGETTO INDIA PROJECT PRIVATE
LIMITED AND ANOTHER**

)...PETITIONERS

V/s.

**THE STATE OF MAHARASHTRA
AND ANOTHER**

)...RESPONDENTS

Mr.Shivaji K. Farakade, Advocate for the Petitioner.

Mr.R.M.Pethe, APP for the Respondent – State.

Mr.Priyatosh R. Tiwari a/w Mr.Sanjay Singh, Advocates for
Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 25TH FEBRUARY 2020

JUDGMENT :

1 Rule. Heard finally by consent of parties.

2. The revisional order confirming the order of the

learned trial court dated 8.1.2019 passed on the application-Exhibit 38 by the learned trial Magistrate, is impugned in this petition.

3. Heard learned counsel for the petitioner/original accused. He argued that there is no provision in law to exhibit a document when the case is fixed for a Judgment. He further argued that the documents were not referred in the chief examination or in the cross examination. Therefore, the learned trial Magistrate ought not to have exhibited the documents.

4. As against this, the learned counsel for the contesting respondent/original complainant submits that the documents were already on the record of the learned trial court and both the courts concurrently held that some of the documents needs to be exhibited.

5. I have considered the submissions so advanced.

The procedural law is not made of justice. The documents which were sought to be exhibited were already on the record of the learned trial court. While allowing the application for exhibiting the documents, in paragraph 5 of its order, the learned trial Magistrate has held thus;

5) I have thoroughly gone through the documents filed vide list Ex.8. Perusal of the same it reveals that along with purchase orders and invoices, complainant brought on record original cheques, return memos, copies of notice and reply of accused, postal receipts and acknowledgments. It is pertinent to state here that cheques have presumptive value under section 118(g) of Negotiable Instrument Act. Documents i.e. purchase order, invoices and deed of partnership which are filed at Sr.no.1 to 4 and 13 in the list Ex.8 are notarized copies. Certainly since it is not original it can not be marked exhibit. However, cheques, bank memos, legal demand notice, postal receipts, acknowledgments and the notice

reply being original can be very well exhibited. Furthermore, all these documents are referred by complainant in his evidence. Therefore, I do not find any reason which may cause any prejudice to accused by exhibiting same. Furthermore, exhibiting documents is an administrative act. Its evidential value has not to be determined at the final order. Hence, considering all these facts, I am of the considered opinion that cheques, bank memos, legal demand notice, postal receipts, acknowledgments and the notice reply filed vide list Ex.8 at Sr.nos.5 to 12 can certainly exhibited. Accordingly, following order is passed.

This order came to be confirmed by the learned revisional court.

6. Whether the documents are duly proved or not will have to be decided while delivering the judgment. However,

at this stage, it can not be said that the complainant was not entitled to get the documents exhibited when those documents were already on the record of the learned trial court. The accused can always point out that the contents of the documents are not proved by arguing the matter.

6. In this view of the matter, no infirmity can be found in the impugned order. The petition is accordingly, dismissed. However, it is made clear that if so advised the original accused may apply to the learned trial Magistrate for recalling the witness for further cross examining them on the documents which were directed to be exhibited by the impugned order.

(A. M. BADAR, J.)