

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

**CRIMINAL WRIT PETITION NO. 100 OF 2020**

Gajanan Sambhaji Rajure,  
Age: 33 Yeas, Oc. Business,  
R/o. Mauli Ngar, Near H.P. Gas Godown,  
Karegaon Road, Parbhani. **..PETITIONER**

**V E R S U S**

Madhavrao S/o Laxmanrao Lokhande,  
Age : 51 Years, Occ. Agriculture,  
R/o. Mayur Colony, Yeshwant Nagar,  
Parbhani. **..RESPONDENT**

...  
Mr. S. J. Salunke, Advocate for the Petitioner.  
Mr. M.P. Kale, Advocate for the Respondent.  
...

**CORAM : SURENDRA P. TAVADE, J.  
DATE : 07.09.2021**

**JUDGMENT :**

Rule. Rule taken up for hearing with consent of both the parties.

2. The petitioner is challenging order passed by the learned Judicial Magistrate, Parbhani below Exh.49 in Summary Criminal Case No. 138 of 2015 dated 15.10.2019.

3. The facts giving rise to the present petition can be summarized as under :-

4. The petitioner is facing charge under Section 138 of the Negotiable Instrument Act, by way of Summary Criminal Case No. 138 of 2015 which is pending before Judicial Magistrate (F.C.) Parbhani. The respondent is a complainant in the said case. He led his evidence and also relied on the evidence of the Post Master to prove the service of notice on the petitioner. In the said application, it is alleged by the respondent that he had issued notice to petitioner but it was returned back with remark 'refused to accept'. It is further contended that the said envelop was misplaced/lost by the respondent. Hence he prayed for leading secondary evidence of the said envelop. The said application was allowed. Hence the petitioner has challenged the said order. It is contended that the respondent has not led any foundation for leading secondary evidence. It is contended that the impugned order is not legal and valid and it is prayed for quash and set aside.

5. On the other hand the learned counsel for the respondent submits that he averred in his affidavit that he had issued notice to respondent calling upon him to pay the amount of cheque. The said notice was refused by the petitioner hence the Postal Department sent back the envelop. But the said envelop was lost but the respondent is having Xerox copy of the said envelop along with postal acknowledgment. He examined

the Post Master to produce the record of the envelope but the Post Master deposed that the transaction was of the year 2015 and his office does not keep/ maintain the record for more than two years, therefore, he could not produce any document regarding the refusal of petitioner to accept the envelop sent by the respondent. Hence the trial court has rightly granted permission to lead secondary evidence. There is no need to interfere with the order.

6. Heard the learned counsel for the petitioner and learned counsel for the respondent. Perused the application ( Exh.49) and impugned order passed thereon.

7. The respondent came with a story that after dishonour of cheque he issued notice to the petitioner calling upon him to pay the amount of cheque but the petitioner refused to accept the notice hence the envelop was returned back with the endorsement that 'addressee refused to accept the same'. The respondent lost the said original envelop, hence he examined the Post Master to prove the endorsement made in the official record but the Post Master deposed that his office maintain the record for two years. The record regarding notice of respondent was destroyed by his office. Hence respondent made an application for leading secondary evidence.

8. On the basis of the above facts it can be said that the respondent has made out the case under Section 65 (c) of the Indian Evidence Act as he lost the original envelop. Similarly, the record regarding said envelop was also destroyed from the office of the Post Master, therefore the respondent has rightly laid the foundation for leading the secondary evidence.

9. It is specifically contended by the respondent that he is having Xerox copy of the envelop which he received from the postal authority. He wishes to produce the same as the original envelop is lost and no record of the said transaction is available with the postal department, therefore the trial Court has rightly allowed the respondent to lead secondary evidence. No illegality is committed by the trial Court by passing impugned order. Hence this petition has no merit. Hence I proceed to pass the following order :-

**ORDER**

Petition is dismissed.

Rule is discharged.

**( SURENDRA P. TAVADE )  
JUDGE**

ysk/03/09/2021