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

912 CRIMINAL WRIT PETITION NO.1721 OF 2019

**SAVATA S/O. PATTU BHALERAO
VERSUS
SAYYED AKHATAR MUKTARALI**

Mr. Chandrakant P. Patil, Advocate for the
petitioner

Mr. P. P. More, Advocate for the respondent

CORAM : N. R. BORKAR, J.

DATE : 02-12-2021

P. C.

. This petition challenges the order dated 01-08-2019, passed by the Additional Sessions Judge, Latur below Exh. 45 in Criminal Appeal No. 88 of 2015.

2. The respondent herein had filed the complaint case against the present petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. In the said complaint case, the petitioner came to be convicted. Against the said conviction, the petitioner has preferred the appeal before the Sessions Court. In appeal, the petitioner moved an application at Exh. 45 with

following prayers :

- 1] This application may kindly be allowed.
- 2] That the complainant, his witnesses Sheikh Chand Usman may be recalled for his effective and proper cross-examination vide section 311 read with section 391 of Cr. P. C. 1973 in the light of this application by the under signed advocate on merits by referring to the material documents filed on record today for just decision of this case.
- 3] That, the accused may be permitted to adduce his own defence evidence on oath and also summon Manager of S.B.H. Br Collector office Latur, concerned Doctors of Sahayadri Hospital Pune, Yuvraj Bhanudas Shelke of Pune, APMC, Latur Officer's of license department, Madhukar @ Madan S/o. Prabhu Ghodake, Sangeeta Ghodake, u/s. 315 r/w 391 of Cr. P. C. 1973.
- 4] That, the additional evidence of these witnesses may be taken by this Hon'ble court or matter may be remanded to Hon'ble trial court in the light of this application vide Section 391 of Cr. P. C. 1973.
- 5] That, any other just and equitable relief to which the accused is legally entitled to may kindly be granted to him.

3. The learned Additional Sessions Judge rejected the said application by the order impugned.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The learned counsel for the petitioner submits that the learned Additional Sessions Judge ought to have allowed the application at Exh.45 for just decision of the case. It is submitted that the petitioner has assigned reasons in the application at Exh.45 as to why he needs to be permitted to adduce additional evidence. In support of his submission, the learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Brigadier Sukhjeet Singh (Retd) Mvc Vs The State of Uttar Pradesh and others reported in JT-2019-2-18.

6. On the other hand the learned counsel for the respondent submits that witness Shaikh Chand Usman was cross-examined at length. It is submitted that no application for recalling him was moved before the trial court. It is submitted that as regards additional evidence, if according to the petitioner it was necessary for just decision of the case, then the petitioner ought to have called those witnesses before the trial court. It is submitted that in absence of any reason as to why it was not done before the trial court, it will have to be held that motive behind filing the application at Exh.45

is to prolong the hearing of the appeal. It is submitted that the said motive is also apparent from the fact that, before moving the application at Exh. 45, even the application for referring the cheque to the hand writing expert was moved before the appellate court. It is submitted that the learned Additional Sessions Judge has recorded the valid reasons for rejecting the application at Exh.45.

7. I have perused the application at Exh. 45 filed by the petitioner and the reply of the respondent to the said application. It is not the case of the petitioner that the witness Sheikh Chand Usman was not cross-examined. Admittedly, no application was moved before the trial court for recalling him. It further appears that petitioner has examined two witnesses in his defence. The petitioner now wants to examine five defense witnesses. No reason is assigned as to why they were not examined before the trial court, if their evidence was essential for the just decision of the case. It further appears that even an application was moved for referring the cheque to the handwriting expert. It is thus, apparent that motive

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of the petitioner is to prolong the hearing of the appeal. No interference is thus called for in the order impugned. The petition is dismissed.

[N. R. BORKAR, J.]

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