

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

WRIT PETITION NO.463 OF 2020

Ravee G. Kaushal and Anr. ... Petitioners
Vs
The State of Maharashtra
& Anr. ... Respondents
...

Mr. Anoop Sharma for the Petitioners.
Mr. Y.M.Nakhawa , APP for the Respondent No.1-State.
Mr. Vivek Sharma for the Respondent No.2.

CORAM : SANDEEP K. SHINDE J.
DATE : NOVEMBER 15, 2021.

P.C. :

Heard.

2 Pending trial in CC NO.8225/SS/2011 under Section 138 of the Negotiable Instruments Act, 1881, accused therein moved an application on 18th July, 2019, purportedly under Section 91 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) seeking

production of record in another Case No.599/N/2009 (1679/2010) instituted by the respondent/original complainant. The learned Magistrate declined the request on the following ground;

“The above referred proceedings were to be tried separately. Therefore, there is no necessity to call for the records as prayed. Hence, application stands rejected.”

. This order is under challenge.

3 Section 91 of the Cr.P.C. empowers the Court to summon or require any person in whose possession document is or is believed to be, to produce it, which is necessary and desirable for trial and other proceedings under the Code. In this case, applicant-accused claims that uncertified copies of record in another case no.599/N/2009 (1679/2010) having placed on record by him. If that be so, the learned Magistrate shall verify such record and ascertain necessity and its desirability, for trial before summoning it from concerned Court. In consideration of these facts, the learned Magistrate shall exercise the

jurisdiction under Section 91 of the Cr.P.C. and pass appropriate order in the application moved by the applicant-accused on 18th July, 2019 preferably within a month from the date on which copy of this application is produced before him.

4 Be that as it may, even otherwise since applicant-accused is in possession of copies on record in another case, he may lead secondary evidence in his defence.

5 Thus, for the reasons stated above, the impugned order is set aside. Petition is partly allowed in aforesaid terms and disposed off.

(SANDEEP K. SHINDE, J.)