

Santosh

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

WRIT PETITION NO. 5680 OF 2018

Ashok Mhatre

...Petitioner

Versus

Faiyaz Hussain Jalil Ahmed & anr.

...Respondents

Mr. Dattatray Adarkar, i/b Juris Consultants Combine, for the
Petitioner.

Ms. Poonam Kadam, i/b Jaiswal & Asso., for Respondent no.1.

Mr. Amit Palkar, APP for the State/Respondent no.2.

**CORAM: A. S. GADKARI, J
DATED: 17th MARCH, 2021**

PC:-

1. The petitioner has impugned order dated 22nd November, 2018, passed below Exhibit-9 in Criminal Appeal No.366 of 2018, thereby rejecting the said application of the petitioner filed under Section 391 of the Criminal Procedure Code, 1973 ('the Code') for adducing additional evidence and/or exhibiting certain documents, which he had produced at the time of recording of his statement under Section 313 of the Code before the trial court.

2. Heard Mr. Adarkar, the learned Counsel for the petitioner, Ms. Kadam, the learned Counsel for respondent no.1 and Mr. Palkar, the learned APP for the State/ respondent no.2. Perused record.

**V. S.
Parekar**

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3. It is the contention of the learned Counsel for the petitioner that, though the petitioner produced certain documents on record at the time of recording of his statement under Section 313 of the Criminal Procedure Code in the trial, the same were not exhibited as the Advocate appearing before the trial court did not take appropriate steps in that behalf. He submitted that, it is, therefore, necessary to either accept those documents or permit the petitioner to adduce additional evidence at the appellate stage. He submitted that the impugned order passed by the learned Additional Sessions Judge is, therefore, erroneous and may be set aside.

Per contra, Ms. Kadam, the learned Counsel for respondent no.1 opposed the petition and submitted that the Appellate Court has not committed any error while passing impugned order. She, therefore, prayed that the present petition may be dismissed summarily.

4. It is a matter of record that, the Trial Court before passing the impugned judgment and order dated 10th May, 2018, had granted ample opportunity to the petitioner to lead evidence in his defence and even as per the contention of the petitioner, he had produced certain documents at the time of recording of his statement under Section 313 of the Code. It was for the petitioner to prove those documents either by entering into the witness box or by summoning a particular witness to prove

those documents. Merely blaming earlier Advocate for not doing a particular thing will not make petitioner entitled for the relief as prayed by him in his application below Exhibit-9. As noted earlier, the petitioner was granted ample opportunity by the Trial Court before pronouncement of judgment and order dated 10th May, 2018. It appears to this Court that it is only by way of an afterthought the petitioner has filed the said application below Exhibit-9 before the Appellate Court.

5. Perusal of impugned order would clearly indicate that the Appellate Court has not committed any error either in law or on facts while rejecting the said application.

The petition being devoid of merits is accordingly dismissed.

(A. S. GADKARI, J.)