

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.356 OF 2021

(Atmaram Kisan Rathod Vs. Jankalyan Nagari Sahakari Patsanstha Ltd., Buldhana and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. S.O. Ahmed, Advocate for Petitioner.
Mrs. K.R. Deshpande, APP for Respondent 2/State.

CORAM: ROHIT B. DEO, J.

DATE: 22nd JUNE, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The petitioner, who is arraigned as accused in proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881 (Act) is aggrieved by the refusal of the learned Sessions Judge to interfere with the order of the trial court whereby application Exh.45 preferred by the accused seeking production of documents is rejected.

3. The application Exh.45 is premised on the assertion that there was no loan sanctioned on 08.07.2006, and therefore, in the interest of effective defence, it would be necessary to summon the concerned staff with the documents pertaining to the loan obtained on 06.07.2006

and the mortgaged deed pertaining to the loan sanctioned on 08.07.2006, which according to the accused was not at all sanctioned much less availed.

4. The learned Magistrate rejected the application Exh.45 vide order dated 08.04.2019 observing that similar applications Exh.26 and 27 were rejected and the only intent is to delay the proceedings. While broadly agreeing with the learned Magistrate, the learned Sessions Judge has observed that the documents which pertain to the earlier loan amount are not necessary for defence.

5. It would have been appropriate, had the learned Sessions Judge not come to any definite conclusion that the documents are not at all necessary for proving the defence. The accused is entitled to discharge the statutory presumption and to the said end would certainly be entitled to produce such documents as, in the opinion of the accused, assist him in discharging the burden.

6. However, this exercise can be done as and when the complainant completes the evidence and the accused is called upon to lead the evidence, if any.

7. In this view of the matter, the learned counsel Mr. S.O. Ahmed, on instructions, seeks leave to withdraw the petition reserving the right to move an appropriate application seeking production of documents, at the stage of

defence evidence. The petition is disposed of as withdrawn, with liberty as prayed.

8. Needless to record, that if any application is moved seeking production of documents at the stage of defence, the same shall be decided on its own merit, uninfluenced by any observation in the judgment impugned.

JUDGE

NSN