

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

923 CRIMINAL WRIT PETITION NO.499 OF 2022

ASHOK DADARAO TAMBE
VERSUS
SHIVAJI LIMBAJI KSHIRSAGAR

...
Advocate for Petitioner : Mr. Pramod A. Kulkarni.
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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 03rd August, 2022.

PER COURT:

. The petitioner / original accused has assailed the order passed below Exhibit-92 in S.C.C. No.3208 of 2016 dated 15th March, 2022, thereby prayer for recalling of the complainant came to be rejected at the hands of 8th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Aurangabad.

2 Heard Mr. Pramod Kulkarni, learned counsel for petitioner. He invited my attention to the order passed by the learned Magistrate below Exhibit-98 dated 18th March, 2021. He submitted that the complainant was allowed to summon the Branch Manager by invoking Section 311 of the Code of Criminal Procedure vide order dated 18th March, 2021. The petitioner/original accused intends to bring on

record certain material, in that light, by recalling the complainant in the witness box. He has accordingly applied before the Trial Court, but the Trial Court has rejected the prayer of recalling of the original complainant. He submitted that the impugned order has caused serious prejudice to the rights and interests of the petitioner/accused. He submitted that the impugned order needs to be quashed and set aside. It is necessary to allow the writ petition to protect the interest of the petitioner.

3 Having regard to the submissions of the learned counsel for the petitioner, I have gone through the impugned order dated 15th March, 2022 in the background of earlier order dated 18th March, 2021 below Exhibit-98. It would reveal that the original complainant had applied to summon the Branch Manager of Bank of India for proving the case of dishonour of disputed cheque by invoking Section 311 of the Code of Criminal Procedure. After hearing both the sides, the learned Magistrate was pleased to allow that application vide order dated 18th March, 2021. Accordingly, the evidence of the Branch Manager of Bank of India was recorded on 11th August, 2021. The learned counsel for the original accused has cross-examined the Branch Manager at length as appearing from the copy of deposition of the Branch Manager, which is placed on record. After completing the evidence of the Branch Manager on 11th August, 2021, the original

accused/present petitioner did not move any application for recalling the original complainant in the witness box. The application came to be moved by the petitioner/accused on 21st February, 2022 to recall the complainant by taking aid of Section 311 of the Code of Criminal Procedure, which appears to be approximately after six months of the evidence of Branch Manager. Is it really necessary to recall the complainant in the witness box in view of the prayer made by the petitioner? The Trial Court has considered this aspect in paragraph No.9 of the impugned order. It is observed by the learned Trial Judge that for just decision of the case, it is not necessary to recall the complainant in the witness box as per the prayer of the present petitioner/original accused. The learned Magistrate has also reproduced the provisions of Section 311 of the Code of Criminal Procedure and discussed under what circumstances the witness can be recalled.

4 Having considered the submissions of the learned counsel for the petitioner and after examining the impugned order, I do not see any legal error on the part of the learned Magistrate while rejecting the application. No case was made out by the petitioner to recall the witness as contemplated under Section 311 of the Code of Criminal Procedure. The evidence of the original complainant was closed way back in the year 2018. Under these circumstances, no case is made

out to interfere in the impugned order. The petition stands dismissed.

5 The Trial Court shall not get influenced by the observations made by this Court and decide the case on its own merits.

[SHRIKANT D. KULKARNI, J.]

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