

CRIMINAL WRIT PETITION NO.803 OF 2022

State of Maharashtra & Anr. ...Respondents

Mr. Dinesh K. Gupta for Respondent No.2.

DATE : DECEMBER 01, 2022

1. Rule. Rule is made returnable forthwith by consent.
2. The petitioners have challenged order dated 25th January 2022, passed by the learned Judicial Magistrate, First Class, 5th Court, Vashi, at C.B.D. Belapur, Navi Mumbai, in S.C.C. Case No.1488 of 2017, rejecting Application filed by the petitioner to de-exhibit documents tendered by respondent no.2.
3. The respondent no.2 is the original complainant in proceedings under Section 138 of Negotiable Instruments Act, 1881.
4. On 10th April 2017, the learned Magistrate issued process against the petitioners for evidence under Section 138 of Negotiable Instruments Act, 1881. During the course of hearing, the complainant filed Affidavit-of-examination-in-chief and the

petitioners were called upon to admit or deny the documents produced by respondent no.2. Petitioners admitted two (2) documents and denied rest of the documents.

5. On 25th January 2019, the complainant filed another Application (Exhibit-30) for production of additional documents.

6. On 16th March 2019, petitioners filed reply and admitted documents at serial nos.1 and 2, but disputed documents at serial nos.3 to 5.

7. On 3rd August 2019, the learned Trial Court exhibited all the documents produced by the complainant including photocopies of the documents. Therefore, the petitioners on 31st August 2019 filed Application below Exhibit-71 to de-exhibit documents i.e. Exhibit-44, 45, 46 and 48 which were copies of original documents.

8. On 25th January 2022, the learned Magistrate after hearing both sides, rejected the Application holding that evidentiary value of the contents of documents is a matter of law and it is open for arguments and rejected the Application of the petitioners. Aggrieved thereby, the petitioners have filed present Petition.

9. Learned advocate for the petitioners relying on the judgment of this Court in the case of **Geeta Marine Services Pvt. Ltd. Vs. The State & Anr.** (AIR 2009 Cri. L.J. 910) submitted that whenever an objection regarding proof of documents or insufficiency of proof or adopting incorrect mode of proof has to be dealt with immediately by the learned Magistrate before proceedings with the cross-examination. It is only in a case where

document is proved in accordance with the provisions of the Indian Evidence Act, 1872, but an objection is raised to the admissibility of the said document, such document can be tentatively marked as an exhibit as objection to admissibility can be decided at the stage of final hearing as contemplated by the decision in the case of **Bipin Shantilal Panchal Vs. State of Gujarat and another** (2001 Cri. L. J. 1254). Merely because the document is referred to in the cross-examination is marked as exhibit, same does not dispensed with the proof of document in accordance with law.

10. Per contra, learned advocate for respondent no.2 submitted that the learned Magistrate has rightly placed reliance on the judgment in the case of **Chintaman Pandurang Borde Vs. Sunil J. Nagwanshi & Ors.** in Writ Petition No.3130 of 2021 to hold that it is not necessary to decide such objection immediately. He, therefore, submitted that there is no merit in the Petition and Petition is liable to be dismissed.

11. Having considered the submissions of either parties and on perusal of the impugned order, in my opinion, the learned Magistrate has failed to exercise jurisdiction vested in it by postponing the decision on the point of mode of proof or sufficiency of proof of the document below Exhibit-44, 45, 46 and 48. As held by this Court in the case of **Geeta Marine Services Pvt. Ltd.** (supra), it was obligatory on the learned Magistrate to decide objection raised regarding proof of documents or sufficiency of proof or incorrect mode of proof not at the time of final argument, but to decide such objection immediately before cross-examination

of witness. Therefore, in my opinion, it is necessary to direct the learned Magistrate to decide as to whether documents below Exhibit-44, 45, 46 and 48 have been proved in accordance with the provisions of the Indian Evidence Act, 1872.

12. I, therefore, pass following order:-

- (i). The impugned order dated 25th January 2022, passed by the learned Judicial Magistrate, First Class, 5th Court, Vashi, at C.B.D. Belapur, Navi Mumbai, in S.C.C. Case No.1488 of 2017 is quashed and set aside.
- (ii). The learned Magistrate shall decide as to whether documents below Exhibit-44, 45, 46 and 48 have been proved in accordance with the provisions of Indian Evidence Act, 1872, or not; and if it is found that the documents are not proved in accordance with the Indian Evidence Act, 1872, same shall be de-exhibited.
- (iii). Rule is made absolute in above terms. No costs.

(AMIT BORKAR, J.)