

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

WRIT PETITION NO.2767 OF 2022

Satish Padmanabh Bhatt

...Petitioner

Versus

The State of Maharashtra through
Central Bureau of Investigation

...Respondent

....

Mr. Abhinav Chandrachud a/w Mr. Ashok Kumar Dubey a/w Mr. Anil Kumar Pandey a/w Mr. Abhinav Dubey a/w Ms. Sweta Yadav i/by SAVJ Law Solutions, Advocate for the Petitioner.

Mr. Harsh Dedhia i/by Mr. H.S. Venegavkar, Spl. P.P., Advocate for the Respondent-CBI.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 17th AUGUST, 2022

PC :

1. The Petitioner is facing prosecution in Special Case No. 115 of 2010 registered with Central Bureau of Investigation (CBI) for offences punishable under Sections 420, 468, 471 read with 120-B of the Indian Penal Code (for short “IPC”) and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

2. Charge was framed by the trial Court vide Order dated 26th April, 2018. The prosecution examined 12 witnesses. The Petitioner preferred an application under Section 311 of Cr.P.C. for recalling PW-11 (Investigating Officer) vide Order dated 20th July, 2022. The application below Exhibit-254 was rejected.

3. Learned Advocate for the Petitioner submitted that, the trial Court has committed an error while rejecting the application preferred by Petitioner under Section 311 of Cr.P.C. The trial Court should have considered the evidence of PW-11 (I.O.) and his cross-examination. The application under Section 311 of Cr.P.C. was preferred since during the course of cross-examination some crucial questions regarding the ledger accounts between complainant bank and the accused company was remained to be clarified. PW-11 has investigated the case. In the cross-examination, he has stated that, the document Nos. 140 and 141, the statement of Bank Account No.CC803101 of the accused-company has been submitted along with certificate under Section 2(A) of Bankers Books of Evidence Act and the said document has been exhibited before the Court vide

Exhibit-252. The Cash Credit Account is the main account of transaction between complainant bank and accused company. The document Nos.140 and 141 are the statements which shows sum of crystallized bills of the accused company has been paid to the bank in the Cash Credit Account of the accused company and there are entries in the Cash Credit Account of the accused company that, they have borrowed the amount from the foreign customers and in the Cash Credit Account No.CC803101 and also has transferred through RTGS as well as cheques in this account. Total sum of Rs.3.18 crores has been paid to the bank. The entries has been clarified by the Investigating Officers. No prejudice will be caused to the prosecution. However, not allowing the recall of the witness for further cross-examination would affect the defence of accused. The questions regarding ledger accounts between complainant bank and accused company has remained to be clarified. The Cash Credit Account is the main account of transaction between complainant bank and accused company. Merely exhibited documents does not mean the documents are proved. The Court has wide powers under Section 311 of Cr.P.C. The application under Section 311 of Cr.P.C. ought to have been allowed in the interest of justice.

4. Learned Advocate for the Petitioner has relied upon the decision in the case of Lekh Raj Vs. State of Haryana,¹ Decision in the case of Ganesh Roy Vs. State of Jharkhand & Anr² and Billar Badri Prasad Vs. State of U.P. & Anr³.

5. Learned Advocate for Respondent-CBI submitted that, the application preferred by Petitioner was devoid of merits. The trial Court has rightly rejected the application. The Petitioner had ample opportunity to cross-examine the witness. No ground was made out to recall the witness. The Petitioner is trying to delay the proceedings.

6. The Petitioner is accused No.1 in the case. He was working as Chief Managing Director of M/s. Astral Glass Pvt. Ltd. The case of the prosecution is that, during the period from 6th February, 2006 to 3rd March 2006 the accused entered into criminal conspiracy with an object to cheat Corporation Bank, Overseas Branch, Mumbai by submitting 30 false and forged export bills raised against overseas buyers and prepared false and fake bills of lading. The bank purchased/discounted these

1 1997 SCC OnLine P&H 264

2 2006 SCC OnLine Jhar 203

3 2005 SCC OnLine All 1212

bills considering them to be genuine. None of these bills were paid by buyer and wrongful loss to the tune of Rs. 3.18 crores was caused to the Bank. The accused submitted false and fabricated export bills and availed the credit facility without carrying out any export against these bills and utilized the entire funds for the purpose of settlement of outstanding of borrower company. The accused induced the bank by submitting false export bills for availing the credit facility. The accused prepared fabricated document for discounting of bills.

7. The prosecution examined about 12 witnesses. PW-11 Mandar Vasudev Lad is the Investigating Officer. His examination-in-chief was recorded. He recorded statements of 28 witnesses and collected documents. He was cross-examined at the instance of accused No.1 on 17th June, 2022. Thereafter, the witness was cross-examined by the Advocate for accused Nos.2 and 3. On the same day, the cross-examination was closed with order of no re-examination. Subsequently, PW-12 was examined and the cross-examination was deferred till next date. The accused No.1/Petitioner preferred an application under Section 311 of Cr.P.C. to recall PW-11 on 19th July, 2022.

The said application was rejected vide order dated 20th July, 2022. It was contended before the trial Court that, during the course of cross-examination some crucial questions regarding ledger accounts between complainant bank and accused company has remained unclarified. The witness has proved the statement of account of accused company which is marked at Exhibit 252. Cash Credit Account is the main account of transaction between complainant bank and accused company. The statement of account (Exhibit-252) indicates that, sum of crystallized bills of accused company has been paid to the bank in the Cash Credit Account of accused company. The accused wishes to clarify from the Investigating Officer about entries made in the statement of account. The learned Sessions Judge observed that, while conducting cross-examination of PW-11 (I.O.) on behalf of accused No.1 ample opportunity is given to conduct the cross-examination and after availing the same, the Advocate for accused No.1 concluded the cross-examination. The statement of account which is proved through the evidence of Investigating Officer is admissible pursuant to the provisions of Bankers Books of Evidences Act. The witness only collected it from the custody of bank. Entries in the statement of account

are self explanatory. If any, clarification is needed, he is not competent persons to do so. Accused are maintaining the account with the bank. They can explain alleged unclarified clarification if any, from the statement of account. Detailed cross-examination is conducted on behalf of applicant/accused. Question with regard to the settlement of account is also asked to the Investigating Officer. Hence, there is no necessity to recall PW-11 (I.O.).

8. I do not find any infirmity in the impugned order. Witness is already cross-examined. The accused had ample opportunity to cross-examine the witness. Learned Sessions Judge has assigned reasons for rejecting the application. No ground is made out to recall the witness. The decisions relied upon by learned Advocate for the Petitioner deals with the powers under Section 311 of Cr.P.C. There is no dispute about the powers of the Court to recall the witness. However, in this case, there is no ground to recall the witness. The Advocate for the Petitioner had cross-examined PW-11 on 17th June, 2022. The evidence of PW-12 was recorded on 19th July, 2022. The case was deferred for his cross-examination. The application

under Section 311 of Cr.P.C. was preferred on 19th July, 2022, which is one month after the evidence of PW-11 was closed and on the day on which examination-in-chief of PW-12 was recorded. In the present case, Investigating Officer had collected the document at the instance of accused No.1. Detailed cross-examination was conducted. No case is made out to interfere in the impugned order. Hence, I pass the following Order.

ORDER

- (i) Criminal Writ Petition No.2767 of 2022 is rejected and disposed of.

(PRAKASH D. NAIK, J.)