

3. By this petition, the petitioner has impugned the order dated 26th August 2021, passed by the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, below Exhibit – 40 in C.C. No.3206/SS/2015, by which, the learned Judge allowed the application of the respondent No.1 herein seeking recall of witness No.1 i.e. himself under Section 311 of the Code of the Criminal Procedure.

4. Learned Counsel for the petitioner submits that the impugned order cannot be sustained in law. She submits that the document sought to be brought on record by the respondent No.1 is a bank statement of a 3rd party. She submits that the said bank statement can either be brought on record by the Bank Manager or by the 3rd party himself i.e. Amit Gangar

5. Learned Counsel for the respondent No.1 opposes the petition. He submits that no interference is warranted in the impugned order.

6. Perused the papers including the impugned order dated 26th August 2021, passed by the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, below Exhibit – 40 in C.C. No.3206/SS/2015,

allowing the application of the respondent No.1 to recall himself under Section 311 Cr.PC. The respondent No.1 is the original complainant. According to the respondent No.1, the petitioner introduced him to one Amit Gangar in January 2012. It is alleged by the respondent No.1 that a few days prior to the said meeting, he was informed by the petitioner that Amit Gangar was a close friend of his and that he was in some financial difficulty and as such in need of funds. It is further alleged that on the assurance of the petitioner, the respondent No.1 agreed to advance a friendly loan of Rs.250 lakhs to Amit Gangar and accordingly transferred a sum of Rs.250 lakhs to Amit Gangar. It is further alleged by the respondent No.1 that Amit Gangar failed to honour his commitment to repay the entire amount advanced to him. According to the respondent No.1, the petitioner advanced post-dated cheques or hundies or promissory note, to the respondent No.1 i.e. 5 cheques of Rs.50 lakhs each. It is the case of the respondent No.1 that even after assuring repayment of the advance to Amit Gangar, neither Amit Gangar nor the petitioner honoured their commitments, pursuant to which, a legal notice was sent and the petitioner was informed that the cheques would be deposited. The said cheques were deposited by the respondent No.1, however, the same were returned unpaid

for the reason 'Account Blocked'. Thereafter, the respondent No.1 issued a statutory notice and on failure on the part of the petitioner to make payment lodged a criminal case in the Court of the learned Judicial Magistrate First Class alleging an offence punishable under Section 138 of the Negotiable Instruments Act. It appears that the petitioner appeared before the learned Magistrate and pleaded not guilty. Thereafter, the complainant i.e. the respondent No.1 stepped into the witness-box. The evidence of the respondent No.1 was over on 26th August 2019 after which the respondent No.1 filed an application to call upon the Bank Manager to give evidence in respect of the bank statements of Amit Gangar. It appears that the said application came to be rejected by the trial Court vide order dated 2nd December 2019. On 29th January 2020, the respondent No.1 filed an application (Exhibit – 39) calling upon the petitioner to admit or deny some portion of the bank statement of Amit Gangar. The petitioner replied that the said bank statement not being of the petitioner, the petitioner was unable to comment on the same. It appears that pursuant thereto, the respondent No.1 filed an application under Section 311 Cr.PC and sought permission to recall himself for giving evidence in respect of the bank statement sought to be produced and for marking the same in evidence.

The said application was opposed to by the petitioner, however, the trial Court allowed the said application vide order dated 26th August 2021. The said order has been impugned in the present petition. The bank statement is of Amit Gangar. The complainant cannot legally bring the said statements on record. Ideally, the said bank statement can be brought on record, either through the concerned Bank Manager of the concerned Bank or by Amit Gangar. Learned counsel for the petitioner also does not dispute the said legal position i.e. the said bank statement of Amit Gangar should be brought on record either by Amit Gangar himself or by the concerned Bank Manager of the bank. The question of complainant stepping into the witness-box and bringing on record somebody else bank statement cannot be legally sustained.

7. Considering the aforesaid, the impugned order dated 26th August 2021 cannot be sustained. Accordingly, the same is quashed and set aside.

8. Needless to state, that the respondent No.1 is at liberty to either examine Amit Gangar or the Bank Manager of the concerned bank to prove

the said bank statement of Amit Gangar, in accordance with law. Ms. Kumbhat, learned counsel for the petitioner does not dispute the said fact. She also states that if an application is made by the respondent No.1 – complainant for examining either Amit Gangar or the Bank Manager to prove the bank statement of Amit Gangar, the petitioner will not object for examining the said witnesses. Statement accepted.

9. Considering what is observed and held hereinabove, the evidence that has come on record, pursuant to the order dated 26th August 2021 shall stand effaced from the record i.e. examination of the respondent No.1 and the cross-examination recorded pursuant to the order dated 26th August 2021. The document i.e. the bank statement exhibited stands de-exhibited. If an application is filed by the respondent No.1 seeking examination of Amit Gangar or the Bank Manager of the concerned bank for bringing on record the bank statement of Amit Gangar, the learned Judge to consider the same uninfluenced by its earlier order dated 2nd December 2019.

10. Rule is made absolute on the aforesaid terms. Petition is accordingly disposed of.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.