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

CRIMINAL APPLICATION NO.919 OF 2022

Bhavnesb Brijmohan Chopra ...Applicant

V/s.

State of Maharashtra & Ors. ...Respondents

Mr. Abhishek Kulkarni for the applicant.

Mr. A. R. Patil, APP for the State.

CORAM: AMIT BORKAR, J.

DATE: OCTOBER 3, 2022

P.C.:

1. By this application under section 482 of the Criminal Procedure Code, the applicant is invoking inherent powers of this Court to challenge rejection of an application under section 311 of the Code to recall the complainant in relation to the questions put by the advocate for the complainant in the cross-examination of the accused.

2. The present application arises out of a complaint under section 138 of the Negotiable Instruments Act wherein on 27th September 2021 the complainant was cross-examined by the present applicant. According to the applicant, at the time of cross-examination the applicant was not present in the Court as it was during Covid-19 period and, therefore, necessary instructions were

not given to the learned advocate for the applicant.

3. The applicant, therefore, filed an application below Exhibit-52 under section 311 of the Code to bring on record evidence in relation to the documents below Exhibit-D of this application. The Magistrate in the impugned order has recorded a statement of fact that the advocate for the complainant has admitted all the documents produced by the accused which are annexed to the present application below Exhibit-D and the documents are marked as Exhibit-47 to Exhibit-50. The learned Magistrate recorded a finding that since during the cross-examination advocate for the applicant has admitted all the documents in relation to which the applicant is seeking recall of the complainant, it is not necessary to bring such evidence on record.

4. Section 58 of the Evidence Act states that the facts which are admitted need not be proved. Since the complainant has admitted all the documents which is the subject matter of an application under section 311 of the Code, in my opinion, the learned Magistrate was wholly justified in rejecting the application for recall of witness.

5. Reliance is placed by the advocate for the applicant on the judgment of the Apex Court in the case of **Rajaram Prasad Yadav v. State of Bihar** reported in (2013) 14 SCC 461. The Apex Court after taking stock of earlier binding precedents in paragraph 17 laid down the principles which the Court should borne in mind while considering application under section 311 of the Code. There cannot be a dispute n relation to the ratio laid

down by the Apex Court and the principles laid down in paragraph 17 of the judgment. However, on the facts of the case no legal prejudice would be caused to the applicant by rejection of an application under section 311 of the Code as these documents are expressly admitted by the complainant in the cross-examination.

6. There is no miscarriage of justice nor error of jurisdiction calling interference under section 482 of the Code.

7. The application is, therefore, rejected. No costs.

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(AMIT BORKAR, J.)