

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3613 OF 2022

Varun Gupta s/o. Giriraj Kumar ...Petitioner
V/s.
State of Maharashtra & Anr. ...Respondents

Mr. Sanjiv Punalekar a/w Mr. Sachin Kanse, Ms. Seema Kulkarni i/
by Ms. Jyoti S. Ghorpade for the Petitioner.

Ms. G. P. Mulekar, APP for the Respondent No.1 (State).

Mr. Yashpal Thakar a/w Mr. Nimeet Sharma, Ms. Jalpa Shah i/by
MZM Legal for Respondent No.2.

CORAM : AMIT BORKAR, J.

DATE : OCTOBER 6, 2022

PC.:

1. By this Writ Petition under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 17th September 2022, passed by the learned Metropolitan Magistrate's 33rd Court at Ballard Pier, Mumbai in C.C. No.5080/SS/2016.

2. The Petitioner is Original Accused No.3 in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881.

After holding a full-fledged trial, the learned Magistrate, by order dated 12th September 2022, closed the evidence of the accused, recording that the accused was examined on 15th March 2022, 1st April 2022 and 22nd April 2022. Thereafter, Petitioner did not examine any witness, and on 30th August 2022, the Magistrate granted the last chance to the accused to examine the witness. However, it is observed that the accused filed an adjournment Application instead of proceeding with the hearing. The learned Magistrate recorded a finding that the accused caused the intentional delay and, therefore, directed evidence to be closed and fixed the matter for final arguments on 17th September 2022.

3. On 17th September 2022, the Petitioner filed an Application under Section 91 of the Code of Criminal Procedure, 1973, for the production of a copy of communication dated 31st October 2013, addressed forward market commission and also communication dated 31st October 2013, addressed to forward market commission by Financial Technologies (India) Ltd.. The said Application under Section 91 has been rejected by the impugned order dated 17th September 2022. The learned Magistrate rejected the said Application, holding that the evidence

of the accused was already closed, and the matter was posted for final hearing, and under the garb of Section 91, the accused is trying to produce on record documentary evidence which cannot be permitted. The said order is the subject matter of challenge in the present Petition.

4. The advocate for the Petitioner submits that the provisions of Section 91(b) is a procedural law, which has been held to be the handmaid of justice. Therefore, the learned Magistrate should have adopted a justice-oriented approach and ought to have allowed the Petitioner to produce documents on record under Section 91 of the Code of Criminal Procedure. He submitted that after the closure of evidence of the accused, respondent No.2 was permitted to produce on record a copy of the plaint in Suit No.221 of 2021 filed in this Court by MMTC against National Spot Exchange Limited, and therefore, the Petitioner ought to have been given opportunity to produce documents in support of his defence. Refusal to grant such permission has resulted in a miscarriage of justice, calling for interference at the hands of this court. He relied on the Judgment of the **Delhi High Court in Criminal Revision Petition No.1169 of 2018 in the case of**

Shyam Manohar Saxena Vs. CBI & Ors., the Judgment of Punjab and Haryana High Court in the case of Amit Sukhija Vs. Pritpal Singh in CRA-M-10937-2020 dated 24th August 2022.

5. Per contra, the learned advocate appearing for respondent No.2 submitted that filing such an Application is nothing but an attempt to protract the final arguments of the case. He submitted that while closing evidence of the accused, the learned Magistrate observed that the accused was trying to cause intentional delay, which has attained finality. He submitted that filing an Application under Section 91 is nothing but an attempt to delay the trial. He relied on the unreported Judgment of this Court (Nagpur Bench) **in Criminal Writ Petition No.869 of 2018 in the case of Omkar @ Premkumar s/o Vijay Sapate Vs. Neha Omkar Sapate.** He, therefore, prayed for the dismissal of the Writ Petition.

6. Having carefully considered the submissions on behalf of the parties, in my opinion, the learned Magistrate rejected the Application mainly on two grounds; i). The complaint is pending for final arguments, and ii). The evidence of the accused was already closed.

7. There is no dispute that the complaint is fixed for the final argument. It is also not disputed that the evidence of the accused has already been closed, and the order of closure of evidence has attained finality. The reasons stated in the Application are that the learned Magistrate allowed the complainant to produce on record a copy of the plaint filed by MMTC; therefore, closure of evidence would not be hit by Section 362 of Code of Criminal Procedure, 1973.

8. In my opinion, the power under Section 91 of the Code of Criminal Procedure, 1973, can be exercised at any stage of the complaint, but the delay in filing such an Application has to be considered in the context of the stage of the proceeding. Once the Court has passed an order of closure of evidence of the accused by recording the finding that the accused is trying to delay the hearing of the complaint, filing of Application under Section 91 of the Code of Criminal Procedure, 1973, after the closure of evidence was rightly rejected by the Magistrate. The purpose of inserting provisions like Section 91 of the Code of Criminal Procedure, 1973, is to bring fairness in the trial in the context of opportunity of natural justice. Therefore, the power under Section

91 needs to be exercised to further the ends of justice. Intentional delay of proceeding operates as anathema to the concept of interest of justice. Therefore, in my opinion, the Magistrate, having already recorded the finding that the accused was trying to delay the matter passed an order of closure of evidence.

9. Insofar as the Judgments relied upon by the Petitioner are concerned, the said Courts have exercised their power in the peculiar facts of the case, and the High Courts have laid down no blanket proposition of law. After all, the exercise of power under Section 91 is a power to be exercised in the facts and circumstances of each case.

10. For the aforesaid reasons, I am satisfied that there is neither error of jurisdiction nor a miscarriage of justice by rejecting the Application of the Petitioner.

11. The Petition has no merit, and the Petition is disposed of.

(AMIT BORKAR, J.)