

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4797 OF 2019

Sudhakar Bhaskar Gaikwad ...Petitioner
vs.
Satish Chandrakant Sonawane and Another ...Respondents

Mr. P.G. Chavan, for the Petitioner
Ms. Gauri Shah, for the Respondent No. 1.

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CORAM : N. J. JAMADAR, J.
DATE : APRIL 27, 2022

P.C.:

1. Heard the learned counsel for the petitioner and the learned counsel for respondent No. 1.
2. The petitioner is facing prosecution for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 in S.C.C. No. 1082 of 2015.
3. Assailing the order passed by the learned Additional Chief Judicial Magistrate, Pandharpur on 3rd August, 2019 whereby the prayer of the petitioner to send a chit, which according to the petitioner is in the handwriting of respondent No. 1/complainant and incorporates the record of the transaction between the complainant and accused, came to be rejected. The learned Magistrate was of the view that the onus lay upon the accused to establish that the said chit contains the record of the transaction

between the complainant and accused and the contents thereof are in the handwriting of the complainant.

4. The learned counsel for the respondent No. 1 complainant pointed out that the said chit has not been yet proved in evidence. From the perusal of the copy of the said chit (page Nos. 36 and 37 of the petition), it becomes evident that it is simply marked 'Article A'. The petitioner would have an efficacious opportunity to lead evidence in proof of the said chit.

5. In this view of the matter, the observations of the learned Magistrate that the content of the said chit do not have any link with the defence of the accused, at this stage, appear pre mature. If the accused succeeds in leading evidence in proof of the said document, the Court will have to consider the evidentiary value thereof.

6. Clarifying the aforesaid position, the petition stands disposed.

(N. J. JAMADAR, J.)