

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 219 OF 2023

Janseva nagari Sahakari Bank Mydt. Bhoom
Tq. Bhoom Dist. Osmanabad
Through its authorised person
Mahsh Vinayakrao Tambolkar
age 48 years, occ. Service
r/o Qureshi Building
Kusam Nagar,
Tq. Bhoom, Dist. Osmanabad

Petitioner

Versus

Bhagwat Digambar Salunke
age 44 years, occ. Business
r/o Chincholi, Tq. Bhoom,
Dist. Osmanabad

Respondent

Mr. D. A. Madke, Advocate for the petitioner.
Mr. S. G. Kawade, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 8th AUGUST, 2023.

JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. By consent, heard finally at admission stage.
3. This petition takes exception to order dated 28th December, 2022, passed in SCC No. 27/2009, rejecting application

under Section 311 of Code of Criminal Procedure recalling witness of the complainant to prove the documents filed along with list Exhibit 75 on 27th August, 2015.

4. Learned counsel for petitioner submits that in the proceedings for offence punishable under Section 138 of Negotiable Instruments Act, complainant's witness was examined by filing affidavit of evidence on 15th July, 2010. His cross-examination was completed on 16th January, 2014. Thereafter an application Exhibit 75 came to be filed wherein production of relevant loan documents was sought to be produced before the Trial Court. The learned Trial Court has allowed production of said documents. It is his contention that once production of documents is allowed, the learned Trial Court ought to have given an opportunity to the complainant to prove those documents.

5. Learned counsel for respondent/original accused opposed the application by contending that the proceedings are pending before learned Trial Court since 2009 and belatedly after around seven years, an application was moved for recalling of the

witness. Thus, according to him, there is no error committed by the learned Trial Court in rejecting the said document.

6. No doubt, the proceeding is pending since 2009. But at the same time, a fact cannot be ignored that after examination of complainant's witness, the learned Trial Court has permitted the documents to be filed on record. The said order of the learned Trial Court permitting filing of the said documents presupposes that since the documents were relevant for decision of the proceedings, they were allowed to be placed on record. Once the Court holds that documents are relevant for decision of the case, it does not stand to any reason why complainant should not be permitted to prove those documents. Hence, on that ground, the impugned order cannot sustain.

7. No doubt, the application for recalling of the witness is filed after lapse of substantial time, however, no malafides can be attributed for the said lapse. Accused would get an opportunity to cross-examine the witness of the complainant in respect of those documents and hence, no prejudice much less irreparable loss will cause to him if the witness is recalled.

8. Since the proceedings is pending since 2009 and that the application for recalling of the witness is filed after substantial period, application Exhibit 99 filed in SCC No. 27/2009 is allowed subject to payment of cost of Rs. 3,000/- by the complainant to the accused.

9. It is informed that the next date of hearing is 9th August, 2023. Complainant undertakes that he will keep the witness present. Learned counsel for respondent/accused undertakes to cross-examine the witness tomorrow itself. The learned Trial Court to decide SCC No. 27/2009, in any case, within a period of three months from today.

10. In view of above, petition is allowed in aforesaid terms. Rule made absolute.

(R. M. JOSHI)
Judge

dyb