

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.252 OF 2023

Rama Dharma Kasab

Petitioner

Versus

Indreshwar Sugar Mill Limited Uplai (Thoge)

Respondent

Mr. S. J. Salunke, Advocate for the petitioner.

Mr. Abhijit More, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 21st AUGUST, 2023.

PER COURT :

1. Heard.

2. This petition takes exception to the order dated 20th April, 2022, passed below Exhibit 95 in SCC No. 396/2015 whereby the learned Trial Court has exercised powers under Section 311 of the Code of Criminal Procedure and has permitted the complainant to lead further evidence.

3. Learned counsel for the petitioner submits that at belated stage of the proceeding, which is pending since 2013, the learned Trial Court ought not to have allowed the application for

leading further evidence. By drawing attention of this Court to the application filed before the Trial Court, it is submitted that change of advocate can never be allowed to become a ground for leading additional evidence. To support his submission, he placed reliance on judgment of Hon'ble Apex Court in the case of State of Haryana vs. Ram Mehar, AIR 2016 Supreme Court 3942. On the contrary, learned counsel for the respondent supported the impugned order.

4. There cannot be any dispute about the fact that Trial Court has wide powers under Section 311 of the Code of Criminal Procedure to summon any material witness or examine any person at any stage of the trial. The only consideration for exercising such power is that it should be done for the purpose of effective decision of the case. In the instant case, complaint is under Section 138 of the Negotiable Instruments Act. Perusal of the record indicates that the photocopy of the agreement between complainant and accused though was placed on record, the original agreement remained to have been placed before the Trial Court. Even if, ground for leading additional evidence was that after change of the advocate it was found that original agreement and account statements were not produced before the Trial Court, even otherwise, it was open for the

complainant to produce the said document once it was realised that the original documents are relevant for decision of the case and those were not placed on record. The Hon'ble Apex Court in the case of State of Haryana vs. Ram Mehar (supra) infact reiterates the powers of the Trial Court under Section 311 of the Code of Criminal Procedure with caution that such powers cannot be exercised where the witnesses are likely to face hardship by their recall.

5. Instant case since being under Section 138 of Negotiable Instruments Act, relevant agreement between the parties and account statements are absolutely essential for just decision of the case. No doubt, the application was filed belatedly, however, it can not become sole ground to reject application, more particularly, when no malafides can be attributed to complainant for the same. Apprehension of accused of further delay of trial can be taken care of by issuing appropriate directions to the learned Trial Court to complete the trial within specified period.

6. In the facts of the case, no perversity is found in the impugned order permitting the complainant to lead further evidence. It needs to be directed that the Trial Court to complete the trial of the

present case within a period of six months. Petition is dismissed in the aforesaid terms.

(R. M. JOSHI)
Judge

dwb