

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.924 OF 2016

Vishnu s/o Govind (Shitole) Lamture

Petitioner

Versus

Sambhaji s/o Balaji Shitole & another

Respondents

Mr. P. P. More, Advocate for the petitioner.

CORAM : R. M. JOSHI, J.

DATE : 5th JULY, 2023.

PER COURT :

1. This petition takes exception to the order dated 1st April, 2016, passed in RCC No. 93/2009 whereby application filed by the complainant for leading secondary evidence is rejected by the learned Trial Court.

2. The record indicates that the complaint is lodged for the offence punishable under Sections 420, 465, 468 of the Indian Penal Code. Application is made by the complainant with specific contention that the original cheque is lost by him. He, therefore, sought permission to lead secondary evidence. The said application

came to be rejected on the ground that the case is for forgery of cheque and hence in the absence of the forged document, the case of the complainant cannot be proved and for want of comparison of the photocopy with the original, secondary evidence cannot be given.

3. The complainant has made specific prayer for leading secondary evidence on the ground that he has lost the original cheque. The question before the Trial Court was as to whether to permit the complainant to lead secondary evidence or not. Section 65(1)(e) of Evidence Act, provides that Secondary evidence may be given of existence, condition or contents of a document, when original has been lost or destroyed. Thus, loss of original document would become ground for leading secondary evidence. By making application and with a submission that the original cheque is lost, a foundation is laid by the complainant. At this stage, it was not open for the learned Trial Court to decide as to whether secondary evidence which is sought to be adduced is to be accepted or not. Said issue can be considered by the learned Trial Court at the relevant time. Hence, keeping contentions of the rival parties open, the impugned order is set aside. Complainant is permitted to lead

secondary evidence. Trial Court to decide its evidentiary value in accordance with law at appropriate stage of trial.

4. In view of above, petition stands disposed of. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb