

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 999 OF 2023

Sunil Ghanshamdas Panch & others

Petitioners

Versus

Manish Ghansham Agrawal

Respondent

CORAM : R. M. JOSHI, J.

DATE : 5th DECEMBER, 2023.

PER COURT :

1. This petition filed under Article 227 of Constitution of India takes exception to the order dated 26th June, 2023 passed below Exhibit 170 in SCC No .2418/2024 by 4th Additional Chief Judicial Magistrate, Jalna, whereby application filed by complainant under Section 311 of Code of Criminal Procedure came to be allowed and complainant was permitted to file certificate under Section 65B of Evidence Act.

2. This petition was heard on 20th July, 2023 and after hearing learned counsel for petitioners, this Court has raised a query to satisfy as to whether non-compliance of Section 65B of Evidence

Act is a defect curable or not. Thereafter, time was sought by learned counsel for petitioners on number of occasions.

3. Today, none present for petitioners. This shows that petitioners are not inclined to make further submissions. Hence, petition is decided on merit.

4. Perusal of petition shows that petitioners are accused in SCC No. 2418/2014 for offence punishable under Section 138 of Negotiable Instruments Act. It is a case of petitioners that after the evidence was over and statement of accused under Section 313 of Code of Criminal Procedure came to be recorded and when the matter was heard, application Exhibit 170 came to be moved seeking permission to produce certificate as contemplated under Section 65B of Evidence Act. The said application was allowed. Being aggrieved by said order, present petition is filed on the ground that filing of certificate is not a formality and the same ought to have been filed at the time of evidence. It is also claimed that the defence of accused is likely to be prejudiced by permitting the said document to be placed on record now. It is claimed that filing of said certificate at this stage is filling up lacuna in the case of complainant.

5. Perusal of order impugned shows that the same was passed after giving an opportunity of hearing to both sides. Learned Trial Court has observed that the document in support of which certificate under Section 65B of Evidence Act is sought to be produced now is already placed on record and evidence is also led to that effect. It is further recorded that the accused has cross-examined the witness on the said document and hence permitting complainant to produce certificate under Section 65B of Evidence Act will not cause prejudice to the accused. The issue before this Court is as to whether it is open for the Trial Court to permit production of certificate under Section 65B of Evidence Act after evidence of complainant is closed. In this regard, reference can be made to judgment of Hon'ble Apex Court in case of State of Karnataka vs. T. Naseer @ Nasir @ Thandiantavida aseer @ Umarhazi @ Hazi and others, **2023 INSC 988** wherein there is reference of judgment of Apex Court in case of State of Karnataka vs. M. R. Hiremath, **2019(7) SCC 515**, it is held that non production of 65B certificate is a curable defect. It is further held that by permitting the prosecution to produce the certificate under Section 65B of the Act at this stage will not result in any irreversible prejudice to the accused. it is held that

certificate under Section 65B of the act will not result in any irreparable prejudice to the accused. Thus, the defect in not filing certificate under Section 65B of the act is curable one. In instant case, undisputedly, the trial is not over. It is always open for the accused to rebut the evidence led by complainant. It may also be open for the accused to cross examine witness on this document if they so desire. In any event, it cannot be said that the order passed by learned Magistrate permitting complainant to file on record certificate under Section 65B of Evidence Act has led to miscarriage of justice. There would be no reason or justification to interfere with the impugned order.

6. By keeping open right of the accused to rebut the said evidence led by complainant in accordance with law, petition stands dismissed.

(R. M. JOSHI)
Judge

dyb