

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

907 CRIMINAL APPLICATION NO.2915 OF 2021

EKTA RETAIL KIRANA MERCHANT SAHAKARI PAT SANSTHA
LTD.JALGAON THROUGH PRAVIN VISHWANATH KOTKAR
VERSUS
M/S. SHIV BUILDERS AND DEVELOPERS THROUGH ITS
PARTNERPARAG RAVINDRA GHORPADE AND OTHERS

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Advocate for Applicant : Mr. Girish S. Rane
APP for Respondent – State : Mr. S.P Sonpawale
Advocate for Respondents No.1 and 2 : Mr. Nirmal R Dayama

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CORAM : R. M. JOSHI, J.
DATE : AUGUST 22, 2023

PER COURT :

. This application involves a short question as to whether the revision application under Section 397 of the Code of Criminal Procedure, 1973 (for short, 'Cr.PC.') is maintainable in respect of the order rejecting the issuance of witness summons under Section 311 of the Cr.PC.

2. Learned counsel for the applicant by relying upon the judgment of the Hon'ble Apex Court in the case of **Sethuraman v. Rajamanickam**, 2009 AIR SCW 2066 submits that the orders of

refusal to call the document and reject the application under Section 311 of the Cr.PC. are interlocutory orders and as such revision against those orders are clearly barred under Section 397 (2) of the Cr.PC.

3. Learned counsel for the respondent / original accused did not dispute the position of law as enumerated by Hon'ble Apex Court, however he claims that his right to challenge the order passed by the learned Trial Court be protected.

4. Perusal of the impugned order shows that the application for issuance of witness summons for production of certain documents was rejected. In view of the aforesaid judgment in **Sethuraman** (*supra*), this order is interlocutory in nature as it does not finally decides the rights and obligations of the parties, it was not open for the learned Additional Sessions Judge to entertain the revision application and to set aside the impugned order.

5. In view of above, following order is passed.

ORDER

(i) Application stands allowed.

(ii) Impugned order dated 01.10.2021 passed by learned Additional Sessions Judge, Jalgaon in Criminal Revision Petition No.64 of 2021 is hereby set aside.

(iii) Liberty is granted to the accused / respondents no.1 and 2 to challenge the order dated 25.06.2021 passed by learned Judicial Magistrate First Class (Court No.2), Jalgaon in S.C.C. No.7131 of 2016 in accordance with law.

. Application stands disposed of in the aforesaid terms.

[R. M. JOSHI]
JUDGE

GGP