

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1870 OF 2022
WITH
CRIMINAL WRIT PETITION NO. 1871 OF 2022
WITH
CRIMINAL WRIT PETITION NO. 1872 OF 2022
WITH
CRIMINAL WRIT PETITION NO. 1873 OF 2022

ALI ABDUL RAHEMAN CHOUS PROPRIETOR SUNRISE
AUTOMATIC BAKERY
VERSUS
SAMIR GANJUBHAI SHAIKH

...
Advocate for Petitioner : Mrs. Manjushri V. Narwade
Advocate for Respondent : Mr. Rohit P. Patwardhan
h/f. Mr. Satej S. Jadhav

CORAM : R.M. JOSHI, J.
DATE : 12th June, 2023

PER COURT :

1. These petitions take exception to the orders dated 17th November, 2022, passed in S.C.C. Nos. 2868 of 2018, 2861 of 2018, 2859 of 2018 and 2858 of 2018, issuing witness summons. By consent of both sides, all petitions are heard and decided together.

2. Petitioner is original accused. Whereas respondent had filed complaint for the offence punishable under Section 138 of Negotiable Instruments Act. The original complainant / respondent herein moved applications for issuance of summons to Murtuza Shaikh proprietor Focus software and Chartered Accountant R.C. Shah of H.M. Kale Associates. These applications

were opposed by the accused on the ground of tenability. It is also stated that similar applications are already pending and that in that applications no such ground is raised which is now sought to be raised by the complainant.

3. Learned Trial Court by passing impugned orders allowed applications and issued witness of summons, subject to costs of Rs. 3,500/- payable to the accused. Learned counsel for the respondent makes statement that amount of costs is paid to the accused.

4. Learned counsel for the petitioner states that complainant had closed his evidence and had filed evidence closing purshis and thereafter, statement of the accused is recorded under Section 313 of Cr.p.c. Accused also examined a witness thereafter, and in such circumstances, prejudice will cause to the accused if the witness summons is issued and witnesses are examined at this stage. She placed reliance on judgments of the Hon'ble Apex Court in case of **Ratanlal Versus Prahlad Jat and others, 2018 (1) Mh.L.J. (Cri.) 451 and Sapan Kumar Chatterjee Versus Central Bureau of Investigation, (2019) 14 Supreme Court Cases 328.**

5. Learned counsel for the respondent / original complainant supported the impugned orders.

6. Perusal of the judgment in case of Ratanlal cited (supra), Hon'ble Apex Court in para 17 of the judgment has observed thus :

"In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised

judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.”

7. Perusal of provisions of Section 311 of Cr.p.c. makes it clear that at any stage of the trial witness can be recalled or summoned to find out truth and render just decision. What is necessary for the purpose is that the Trial Court should record the reasons for exercising these powers and reasons should be justified one. Hon'ble Apex Court has emphasized upon exercise of such powers for strong and valid reason.

8. In the instant case, perusal of the impugned orders show that there is no dispute about the fact that the witness summons are issued for proving documents already filed on record. Thus, It cannot be said that the complainant is leading evidence in order to fill up lacunas. It does not stand to any reason as to why the complainant would not examine the witness to prove the documents which are already placed before the Trial Court and hence, the case of the complainant about inadvertence deserves to be accepted. Apart from this the accused was unable to show as to how his defence would get prejudiced by examination these witnesses. It is always open for the accused to

cross-examine these witnesses and if necessary, to lead further evidence.

9. Learned Trial Court has also taken care to ensure that the harassment if any caused to the accused by allowing all the applications is compensated in terms of money by imposing costs of Rs. 3,500/-. Having regard to the nature of proceeding and more particularly in view of the fact that it is not the case where any attempt is seen to have been made by the complainant for filing up the lacunas and considering the reasons recorded by the Trial Court, this Court finds no perversity in the impugned orders.

10. Since the trial is pending for last five years, learned Trial Court to dispose of S.C.C. Nos. 2868 of 2018, 2861 of 2018, 2859 of 2018 and 2858 of 2018, within a period of six months from the date of knowledge of this order.

11. Petitions stand dismissed.

[R.M. JOSHI, J.]