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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.846 OF 2022

AND

WRIT PETITION NO.850 OF 2022

Arvind Hanumant Gole

.. Petitioner

v/s.

Mohammed Iqbal Abdul Hamid

Memon And Anr.

.. Respondents

ALONG WITH

INTERIM APPLICATION NO.4269 OF 2022

IN

WRIT PETITION NO.846 OF 2022

AND

INTERIM APPLICATION NO.4268 OF 2022

IN

WRIT PETITION NO.850 OF 2022

Arvind Hanumant Gole

.. Applicant

v/s.

State of Maharashtra And Anr.

.. Respondents

....

Mr. Vivek Shukla, a/w. Ms. Bushra Sayed, i/b. Devendra Mishra, for the Petitioner/Applicant.

Mr. Osman A. Chishty, i/b. Mr. Irfan N. Shaikh, for the Respondent.

Mr. A.R. Patil, APP, for State.

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CORAM: R.G. AVACHAT, J.

DATE : 2 JANUARY 2023.

P.C:-

The challenge in this petition is to the order dated 4 February 2022 passed by the Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai, rejecting application (Exhibit -71). It is a case instituted on a complaint for offence punishable under Section 138 of the Negotiable Instruments Act. The Petitioner/Accused moved the application (Exhibit-71) with the following prayer:

“[A] That this Hon’ble Court may be pleased to set aside the “exhibited” documents and to carry out admission/denial u/s. 294 of Cr.P.C. as per the guidelines issued by the Hon’ble Supreme Court of India (Para No.17), in Suo Motu (Cri) No.1 of 2017 dated 20.04.2021.”

2. Learned Advocate for the Petitioner submits that no fixed date was given for compliance of Section 294 of Code of Criminal Procedure. On the given date, when the documents came to be marked/exhibited, the Petitioner/accused was not present. As such one of the parties to the proceedings was absent on the given date. The Advocate representing the Petitioner, thus, did not have instructions as regards admission/denial of those documents. The learned Advocate has relied on the judgment of the Apex Court in Suo Motu Writ (Cri.) No.1/2017 in *Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials vs. The State of Andhra Pradesh And Ors.*¹ and judgment of this Court in case of *Geeta Marine Services*

¹ 2021 ALL MR (Cri) 3071

*Pvt. Ltd. And Anr. vs. State And Anr.*². The learned Advocate specially adverted this Court's attention to para 17 of the Apex Court judgment. For better appreciation, the same is reproduced below:

“17. This court is of the opinion that the courts in all criminal trials should, at the beginning of the trial, i.e. after summoning of the accused, and framing of charges, hold a preliminary case management hearing. This hearing may take place immediately after the framing of the charge. In this hearing, the court should consider the total number of witnesses, and classify them as eyewitness, material witness, formal witness (who would be asked to produce documents, etc) and experts. At that stage, the court should consider whether the parties are in a position to admit any document (including report of experts, or any document that may be produced by the accused, or relied on by her or him). If so, the exercise of admission/denial may be carried out under [Section 294](#), Cr. PC, for which a specific date may be fixed. The schedule of recording of witnesses should then be fixed, by giving consecutive dates. Each date so fixed, should be scheduled for a specific number of witnesses. However, the concerned witnesses may be bound down to appear for 2-3 consecutive dates, in case their depositions are not concluded. Also, in case any witness does not appear, or cannot be examined, the court shall indicate a fixed date for such purpose. The recording of deposition of witnesses shall then be taken up, after the scheduling exercise is complete. This court has appropriately carried out necessary amendments to the Draft Rules.”

Moreover, paragraph 22 and 23 of the judgment of this Court in *Geeta Marine Services* (supra) are reproduced here for better appreciation:

² 2009 (2) Mh.L.J. 410

“22. The submissions have been made by pointing out a consistent practice followed in the Courts in Maharashtra that when a document is referred to during the course of cross-examination of a witness, the said document is marked as an exhibit though it is not earlier marked as an exhibit. This is nothing but a practice of convenience. The practice of the marking a document referred to in the cross-examination is only the purposes of locating and identifying the said document. Marking a document as exhibit by such a process based on consistent practice followed in the Court of law does not dispense with the requirement of proof of the execution, contents and genuineness of the document in the accordance with law of evidence unless the witness concerned admits the execution and genuineness of the document. Therefore, marking a document in cross-examination in this manner will not dispense with the proof of the document in accordance with law of evidence.

23. As set out earlier, the Apex Court has made three categories of objections raised by rival party when documents are produced in Court of law. The first objection is regarding insufficiency of the proof and/or irregular mode adopted for proving the document. This objection is that the document has not been proved in accordance with law. The second objection is that the document is not properly stamped as required by the [Stamp Act](#) or Bombay Stamp Act as the case may be. The third objection is that the document sought to be proved is otherwise inadmissible in evidence. In the case of R.V.E. Venkatachala (supra) the Apex Court has made specific distinction between the first objection regarding insufficiency of proof or irregular or incorrect mode of proof and the other objection regarding inadmissibility in evidence. The Apex Court observed that is so far as objection regarding proof of document is concerned, the same has to be decided then and there. However, even after marking a document as exhibit, an objection to its admissibility can be raised at any stage of the proceedings. The decision on this objection can be postponed till final disposal of the case. As pointed out earlier, as far as objection regarding insufficiency of stamp is concerned, the constitution bench of the Apex Court

has already held that such objection has to be raised before a document is marked as exhibit and the same has to be decided immediately.”

3. Considered the submissions advanced by the learned Advocate. Gone through the order impugned herein. The factual aspect narrated in the impugned order is not taken exception to. The order suggests that the Respondent complainant had filed his examination-in-chief on affidavit. Documents came to be produced along therewith. The learned Advocate for the Petitioner/accused was very much present. Based on the evidence in examination-in-chief, the documents came to be marked/exhibited. Much water has flown thereafter. The witnesses for the Respondent complainant were cross-examined on behalf of the Petitioner/accused. The Petitioner/accused was subjected to his examination under Section 313 of Criminal Procedure Code. The Respondent complainant has also tendered his written arguments. As such, the case is fixed for submissions/written arguments to be made by the Petitioner/accused. Now at this stage, the Petitioner/accused wants to put the clock back. The same cannot be done.

4. Needless to mention that mere marking/exhibiting the documents does not amount to proof of the contents thereof. Documents which have not been proved in accordance with the provisions of Evidence Act cannot be read in evidence. The Petitioner/

accused can very well urge the same before the trial court. The trial court may decide whether those documents are to be read in evidence or not. Suffice it to say that although a fixed date was not given for compliance of Section 294 of Criminal Procedure Code, the conduct of the Petitioner suggests the same to have been waived, since he cross-examined the complainant/Respondent and his witnesses and it is only at the stage of making arguments on his behalf, the application came to be moved.

5. In the given facts and circumstances of the case, this Court finds no case to interfere with the order impugned herein.

6. Learned Advocate submits that he proposes to challenge the present order and, therefore, asked for direction to the trial court to adjourn the matter by two weeks.

7. In view of the above, the learned trial court would do well to accommodate the Petitioner/accused for a couple of weeks. The learned Advocate makes a statement that no further adjournment would be sought on this ground before the trial court.

8. Both petitions are disposed of.

9. In view of the disposal of the petitions, nothing survives in the interim applications and the same are disposed of accordingly.

(R.G. AVACHAT, J.)