

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1375 OF 2023

Manu Power Equipments Pvt. Ltd. &

Anr.

... Petitioners

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Balwant Salunkhe for the Petitioner.

Mr. M.G. Patil, APP for the respondent No.1/State.

Mr. Benny Joseph with Ms. Pallavii Kaamath i/by B.J.
Law Offices LLP for the respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 18, 2023

P.C.:

1. The petition is directed against the judgment and order dated 21st January 2023, passed by Metropolitan Magistrate 7th Court, Dadar, Mumbai below Exhibit 149 along application under 311 of Code of Criminal Procedure, 1973. The petition arises out of proceeding under Section 138 of Negotiable Instruments Act, 1881. The accused during the course of trial denied the signature over the cheque. He also denied delivery of subject goods. The defense evidence was closed on 20th August 2022.

2. Since the accused denied the existence of legally recoverable debt and the signature on the cheque, the respondent No.1/complainant while an application under Section 311 of Code of Criminal Procedure to examine 5 witnesses to prove the cheque

and delivery of goods.

3. The petitioner challenged and objected the reasons of complainant or contending that such application is not maintainable after the accused has examined its witnesses and closed evidence. Statement under Section 313 of Code of Criminal Procedure, 1973 has also been recorded. Allowing such application would tantamount to fill up of lacuna. The application deserves to be rejected.

4. The Magistrate relying on the judgment in the case of **Rajendra Prasad Vs. Narcotic Cell** reported in AIR 1999 SC 2292 held that the Apex Court permitted a party to the trial to cure errors, if proper evidence is adduced. Relevant material was not brought on record inadvertently. The Court should be magnanimous in permitting such mistake to be rectified. It was further held that after all function of the criminal justice is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

5. The Apex Court in paragraphs 8 and 16 of **Natasha Singh Vs. Central Bureau of Investigation (State)**, reported in 2013 (5) SCC 741 has held as under :-

“8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined *if his evidence appears to it, to be essential to the arrival of a just decision of the case*. Undoubtedly, CrPC has

conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such rights would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. [*Talab Haji Hussain v. Madhukar Purshottam Mondkar* (AIR 1958 SC 376 : 1958 Cri LJ 701), *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158 : 2004 SCC (Cri) 999 : AIR 2004 SC 3114, *Zahira Habibullah Sheikh (5) v. State of Gujrat, (2006)* 3 SCC 374 : (2006) 2 SCC (Cri) 8: AIR 2006 SC 1367, *Kalyani Baskar v. M.S. Sampooram* (2007) 2 SCC 258 : (2007) 1 SCC (Cri) 577, *Vijay Kumar v. State of U.P.* (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240, and *Sudevanand v. State* (2012) 3 SCC 387 : (2012) 2 SCC (Cri) 179]"

6. In the facts of the present case, the application is filed by the complainant. In view of defence raised by the accused, as per the judgment of Apex Court in **Natasha Singh** (supra) only issue to be

considered is whether evidence to be adduced is relevant or not. If such evidence is necessary to arrive at just decision in the case, the learned Magistrate is duty bound to allow the application under Section 311 of Code of Criminal Procedure, 1973. It is not the case of accused that the evidence sought to be adduced is not relevant or is not necessary to arrive at just decision. The application is objected on the ground that such application has been filed after the disclosure of evidence and for recording of statement under Section 311 of Code of Criminal Procedure, 1973.

7. Considering the nature of proceedings being under Section 138 of Negotiable Instruments Act, 1881, application having been filed by the complainant, and is necessary to arrive at just decision the impugned order has not resulted in miscarriage of justice.

8. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)