

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

CRIMINAL WRIT PETITION NO.1654 OF 2023

M/s. Gourmet Renaissance Pvt. Ltd.
and others

..... Petitioners

Versus

State of Maharashtra
and another

.... Respondents

Mr. Kartik Garg, Advocate i/b. Sonal Doshi and Co. for the
Petitioners.

Mr. M.G. Patil, APP, for the Respondent No.1-State.

Ms. Sushma Satpute, Advocate a/w. Shakuntala Shetty i/b.
Satpute & Shetty Associates for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th JULY, 2023

P.C. :

1. The Petitioners have challenged the order dated
6.1.2023 passed by the 7th Judicial Magistrate, First Class,
Nashik below Exhibit-47 in Summary Case No.6353/2017.

2. Heard Mr. Kartik Garg, learned counsel for the
Petitioners, Mr. M.G. Patil, learned APP for the Respondent

No.1-State and Ms. Sushma Satpute, learned counsel for the Respondent No.2.

3. The Petitioners are the original accused in the said proceedings filed under Section 138 of the Negotiable Instruments Act, 1881. During the course of leading evidence, the complainant produced the photo-copies of the relevant documents. He made an application below Exhibit-45 on 13.12.2022 mentioning that the original documents were required to be produced in other Court proceedings and, therefore, the same could not be given in custody of the Court on record of this case. He requested that the photo-copies can be compared with the originals and the photo-copies can be taken on record.

4. On that application, learned Magistrate directed the Assistant Superintendent of the Court to verify the documents. After this, the complainant i.e. the Respondent No.2 herein preferred an application at Exhibit-47 praying that the verified copies of the original documents be read in

evidence and be given exhibit numbers. The application below Exhibit-47 was made on 13.12.2022. This application was opposed by the Petitioners by filing their say on 6.1.2023.

5. On this application Exhibit-47, learned Magistrate passed the impugned order on 6.1.2023 mentioning that the documents at Sr. Nos.1 to 6 were verified and the documents at Sr. Nos.7 to 13 were the original documents. The accused would have an opportunity to cross-examine the complainant. He further observed that merely exhibiting the documents would not mean that they are proved. He further observed that no prejudice would be caused to the accused as they had an opportunity to cross-examine the complainant. On this reasoning, the application preferred by the complainant was allowed.

6. Learned counsel for the Petitioners submitted that the whole procedure adopted by the learned Magistrate was not in accordance with law. Learned Magistrate should

have himself verified the original documents and the photo-copies before taking the photo-copies on record by marking them as Exhibits. He further submitted that when the original documents were compared with the photo-copies, the accused were not permitted to inspect the original documents and, therefore, it has caused serious prejudice to their possible defence.

7. Learned counsel for the Respondent No.2 adopted a very fair stand. She submitted that the complainant is willing to produce the original documents in respect of the concerned Exhibits. She submitted that she has no objection for the accused taking inspection before the documents are verified by the Court itself.

8. Considering the stand taken by learned counsel for the Respondent No.2, which in my opinion is very fair, this Application can be allowed and the procedural irregularity can be corrected.

9. Hence, the following order:

:: O R D E R ::

- i. The order dated 6.1.2023 passed below Exhibit-47 in Summary Case No.6353/2017 passed by learned Judicial Magistrate, First Class, 7th Court, Nashik, is set aside.
- ii. The complainant is directed to produce the original documents in the trial Court. The accused and their Counsel can inspect the original documents.
- iii. Learned Magistrate shall compare the original documents with the photo-copies which are to be exhibited. After this, the photo-copies can be marked as Exhibits.
- iv. With these observations, the Petition is disposed of.

Digitally signed
by
PRADIPKUMAR
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
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(SARANG V. KOTWAL, J.)

Deshmane (PS)