

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

CRIMINAL WRIT PETITION NO.2179 OF 2023

Liberty Tea Company AA Group
and others

.....Petitioners

Versus

M/s. G.S. Enterprises
and another

.... Respondents

Mr. Mahendra Shingade, Advocate a/w. Archana S. Shelar
for the Petitioners.

Mr. Sujit Sahoo, Advocate for the Respondent No.1.

Mr. A.R. Patil, APP for the Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JULY, 2023

P.C. :

1. This Writ Petition is filed challenging the order below Exhibit-54 on 29.4.2023 passed by the Judicial Magistrate, First Class, Vashi at C.B.D. Belapur in S.C.C. No.884/2021. The Petitioners are the original accused in the said case and the Respondent No.1 is the original complainant.

2. The stage of the trial is that the evidence in the form of an affidavit was given by the Respondent No.1-complainant. He was cross cross-examined. After the cross-examination, the Respondent No.1-complainant sought to conduct re-examination. The counsel for the accused-Petitioner objected to such re-examination on the ground that the Petitioners can prefer an application under Section 311 of Cr.P.C.. Accordingly, the Respondent No.1 made an application under Section 311 of Cr.P.C. along with the list of documents which he proposed to produce. Said application was allowed by the learned Magistrate by the impugned order. It was observed that the documents were relevant in order to decide the matter on merits and to give equal opportunity to both the sides the prayer under Section 311 of Cr.P.C. was justified. It was observed that though the accused had objected, since he would get opportunity to cross-examine the complainant, no prejudice would be caused to him.

3. Learned counsel for the Petitioners submits that

the application made before the trial Court under Section 311 of Cr.P.C. is absolutely vague. There is no reference to a single document. There is no mention as to how those documents are relevant. He further submitted that this may amount to filling up lacuna in the evidence of the Respondent No.1-complainant.

4. Learned counsel further submitted that all these documents were already in possession of the complainant except the documents which were on the official website and, therefore, there was no reason as to why the complainant could not produce them at the time of submitting his evidence in the form of examination-in-chief.

5. Learned counsel for the Respondent No.1-complainant, on the other hand, submitted that when the application under Section 311 of Cr.P.C. was made on that very day i.e. on 30.1.2023 a list of documents was produced which he proposed to introduce in the evidence. He submitted that thus the application should be considered along with the list of documents and alongwith the

descriptions of those documents.

6. I have considered these submissions. I do not see anything wrong in the reasoning of the learned Magistrate in allowing the application under Section 311 of Cr.P.C. It must be noted that when the cross-examination was over, learned counsel for the complainant had immediately indicated that they wanted to conduct re-examination to which the learned counsel for the accused objected. The counsel for the accused-Petitioners had submitted that if the complainant had to produce any document, he had to prefer an application under Section 311 of Cr.P.C.

7. Considering the submissions of both the parties, learned trial Judge permitted the complainant to prefer an application under Section 311 of Cr.P.C. for producing the documents in the trial Court.

8. As rightly submitted by learned counsel for the Respondent No.1-complainant, the application was

accompanied by the list of documents which were eight in number. Some of the documents were in the nature of receipts of portal of supplied goods from the company to the accused. Some of the documents were in the nature of GST registration certificates. All these documents mentioned in the list are relevant for the transaction and for doing complete justice to the parties. The complainant cannot be prevented from producing his entire evidence. Learned Magistrate has rightly observed that the accused would get an opportunity to cross-examine the complainant on this aspect and hence there cannot be any prejudice caused to the Petitioners. It is also important to note that the trial is at the initial stages and the first witness of the complainant in the form of his own evidence is not yet over and, therefore, it is not even a belated stage. The complainant had immediately made this application. In fact, since the cross-examination was over the complainant wanted to re-examine the witness in respect of the material introduced in the cross-examination. The complainant-Respondent No.1

was entitled to conduct re-examination to remove ambiguity with reference to the questions put in the cross-examination. Therefore, in any case, the complainant-Respondent No.1 deserves sufficient opportunity to prove its case. Equally important is the opportunity which is required to be given to the accused to cross-examine the complainant in respect of the further evidence which is proposed to be led under Section 311 of Cr.PC. by producing other documents.

9. In this view of the matter, in the interest of justice, the approach taken by the learned Magistrate will have to upheld and hence the impugned order cannot be interfered with. In the result, this Writ Petition is dismissed. All contentions raised by both the parties on the merits of the matter can be decided while deciding the trial finally.

(SARANG V. KOTWAL, J.)

Digitally signed
by
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PRAKASHRAO
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