

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

CRIMINAL APPLICATION NO.697 OF 2023

M/s. Sainath AssociatesApplicant
Versus
Sudhirsingh Madhavsingh Pardeshi
and another Respondents

Mr. Akshay S. Karlekar, Advocate i/b. Sujay H. Gangal, for
the Applicant.

Mr. A.R. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 04th SEPTEMBER, 2023

P.C. :

1. The Applicant has challenged the order dated 18.5.2023 passed by the Additional Sessions Judge, Pune in Criminal Revision Application No.31/2023. Said Revision Application was preferred by the Respondent No.1 herein, who was the original complainant in S.C.C. No.5293/2017 before the Judicial Magistrate, First Class, Court Room No.2, Pune. The Applicant is the original accused in the

said proceedings filed under Section 138 of the Negotiable Instruments Act, 1881. The trial is in progress and has reached almost the concluding stage. The arguments were advanced by both the parties and the matter was kept for judgment. At this stage, the Respondent No.1-original complainant preferred an application for his own re-examination under Section 311 of Cr.P.C. Said application was rejected by learned trial Judge. That order passed below Exhibit-95 was challenged in the Revision Application by the original complainant. It was allowed and hence the Applicant-original accused has challenged the Sessions Court's order in the present Application.

2. Heard Shri Akshay Karlekar, learned counsel for the Applicant and Shri A.R. Patil, learned APP for the State.

3. The complaint's case is that the Applicant was to sell a flat to him in the year 2006. The flat was at Survey No.50/4/2B/13, Omsai Apartment, 1st Floor, Katraj, Warkhadenagar, Pune admeasuring 660 sq. ft. The

purchase price was fixed at Rs.4,68,600/-. On 17.2.2006 an agreement was registered with the Sub-Registrar regarding the same. It is the case of the complainant that he paid Rs.1,80,000/- through cheques and Rs.2,30,000/- in cash from time to time. The flat was not given to him. In the year 2016, the Applicant told the Respondent No.1 that it was not possible to give him the flat and instead he offered to pay Rs.16 Lakhs by three cheques as the prices had escalated. The complainant-Respondent No.1 accepted those cheques and presented for encashment. Those were dishonored and thereafter the prosecution was launched.

4. During trial the complainant led his evidence in the form of an affidavit by way of examination-in-chief in which he reiterated the complaint. During cross-examination, he admitted that he had not tendered the bank statements regarding transaction of Rs.80,000/- through his bank. He admitted that he had not tendered any receipts. In respect of the amount of Rs.2,30,000/- which was allegedly given in cash, he was cross-examined.

He answered that he did not tender the receipts for Rs.2,30,000/- on record. He denied the suggestion that since he had not paid said amount of Rs.2,30,000/-, the accused had not given him the receipts and, therefore, the receipts were not tendered in evidence. After that the trial proceeded. The complainant examined himself and two bank witnesses. Both the parties concluded the final arguments. The matter was fixed for judgment. At this stage, the complainant made an application under Section 311 of Cr.P.C. for two reasons. It is his case that he had subsequently found those receipts in respect of the amount of Rs.2,30,000/- which he wanted to produce on record. The second ground was that the envelope at Exhibit-25 which showed that the demand notice sent by him to the accused was not-claimed; was not opened and, therefore, it was necessary to clarify that evidence. The accused-Applicant opposed this application filed at Exhibit-95. The learned trial Judge accepted the objection of the Applicant that said application was filed after the arguments were

concluded and such application was an attempt to fill-up the lacuna. Learned Judge also observed that the complainant had failed to explain as to how the receipts were miraculously found after the arguments were over. Learned Judge, therefore, rejected the complainant's application. On the other hand, learned Additional Sessions Judge was of the view that fair and just trial was required to be conducted, therefore, it was necessary to allow the application. Thus in the revision, the order of the trial Court denying the opportunity to the complainant was set aside and the complainant -Respondent No.1 was permitted to reexamine himself subject to payment of cost of Rs.10,000/-.

5. Learned counsel for the Applicant reiterated the stand taken in the trial Court that the Application under Section 311 of Cr.P.C. was made at a belated stage. It was not permissible to fill-up lacuna in the prosecution case at this belated stage. He further submitted that this would cause prejudice to the accused and, therefore, the

application should not have been allowed. He submitted that learned trial Judge had given sufficient reasons for rejecting said application.

6. Learned counsel relied on the judgment of a Single Judge Bench of this Court in the case of **Nayna Rajan Guhagarkar Vs. State of Maharashtra**¹

7. I have considered these submissions. Having perused both the orders passed by the trial Court as well as by the Sessions Court, I am of the opinion that the reasons mentioned by the Sessions Court are acceptable. The purpose of the trial is that there should be fair opportunity to the parties to lead evidence. Therefore, if before conclusion of the trial some evidence is discovered which was not available at the initial stage; the parties should not be denied an opportunity to produce that evidence on record. Questions were asked about those receipts. Sufficient foundation was led in the examination-in-chief regarding the amount given in cash. In the cross-

¹ 2021 ALL MR (Cri) 2716

examination questions were asked regarding the receipts. It was always the case of the complainant that the amount of Rs.2,30,000/- was paid in cash. In the cross-examination, he admitted that he did not produce the receipts on record. His case is that after the arguments were concluded, he found those receipts. If he has really found those receipts subsequently there is no reason as to why he should be denied the opportunity to produce those receipts on record. It goes without saying that the accused-applicant shall have the full opportunity to dispute the genuineness of those receipts. He can cross-examine the complainant and he can also dispute the contents of those receipts. This would be an exercise which has to be undertaken before the trial is over. By this course of action both the sides will get fair and sufficient opportunity to put-forth their respective cases. Therefore, in my opinion, permission can be granted to the complainant to re-examine him to produce those receipts on record. The accused can dispute those receipts and can cross-examine

the complainant. The Revisional Court had already imposed cost of Rs.10,000/- on the complainant which he will have to pay for making such an application belatedly.

8. As far as the second issue of explaining the contents of the envelope is concerned, said prayer only clarifies the evidence on record. Therefore, it is also necessary to explain the contents of that envelope. Even on that count, the complainant needs to be given sufficient opportunity.

9. As far as reliance placed by learned counsel for the Applicant on **Guhagarkar's** case is concerned; in the said judgment itself it is mentioned that having regard to the peculiar facts of that case, recalling of the complainant and panch witnesses was not allowed. That case was under the Prevention of Corruption Act and the prosecution at the belated stage wanted to produce the memory card containing the conversation at the time of trial. The facts of that case are totally different. The judgment itself

mentions that it was passed in the peculiar facts of that case. Therefore, the ratio in that case cannot be applied to the present case.

10. Considering the above discussion, I do not find any error in the impugned order passed by the Additional Sessions Judge, Pune in Criminal Revision Application No.31/2023. Accordingly, present Application is rejected.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

(SARANG V. KOTWAL, J.)

Digitally signed by
PRADIPKUMAR
PRAKASHRAO DESHMANE
Date: 2023.09.07 14:53:20
+0530