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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.255 OF 2023

Madhuri R. Choubey .. Petitioner
v/s.
State of Maharashtra And Ors. .. Respondents

....

Mr. Chandrashekhar V. Yadav, for the Petitioner.

Mr. Arfan Sait, APP, for State.

....

CORAM: R.G. AVACHAT, J.

DATE : 23 JANUARY 2023.

P.C:-

Heard.

2. The challenge in this writ petition is to the order dated 19 June 2019 passed by 44th Metropolitan Magistrate, Andheri, Mumbai, allowing application, under Section 311 of Cr.P.C. filed by the Respondent/complainant. The Petitioner herein is the accused in a proceeding initiated under Section 138 of the N.I. Act. The Petitioner first challenged the said order by filing revision application before the Court of Sessions at Dindoshi. He has, however, been unsuccessful therein. He is, therefore, before this Court.

3. Learned Advocate for the Petitioner would submit that the Respondent/complainant moved the application only with a view to fill-up lacunae in the case. Recording of evidence in the case was over long back. The matter was fixed for arguments of learned Advocates for the parties to the proceedings. The Respondent/complainant all of a sudden preferred the application. The same is not maintainable. Learned Advocate relied on judgment of this Court in case of *Umesh Nanaji Shinde vs. Moreshwar Namdeo Raut*¹.

4. Considered the submissions advanced. For better appreciation, the relevant averments in the application, under Section 311 Cr.P.C., are reproduced below:

“4. I say that now matter is posted for argument. I say that my previous advocate Y.R. Dubey expired on 15/03/2018, therefore, I have engaged present Advocate for initiating further steps in the above case. I say that my present Advocate after going through the paper and proceedings of the above case, informed me that I have not examined witness from my bank namely Union Bank, Oshiwara, Jogeshwari (West), Mumbai Branch to prove the contentions made by me in my statutory demand notice which is exhibited by the Hon’ble Court. I has handed over all paper and proceeding to my previous advocate but it seems to me that he through over sight by mistake has not relied and annexed one letter dated 16/11/2013 written by me to the Branch Manager, Union Bank, Oshiwara, Jogeshwari (West), Mumbai Branch. I say that the said letter dated 16/11/2013 is vital document to decide the present case. I say that the Second Cheque dated

12007(2) Mh. L.J. (Cri.) 597.

17/10/2013 of Rs.52,000/- was though dishonoured on 21/10/2013, however, my Bank has not given me original dishonoured cheque and bank memo and I was informed that due to some mistake on the part of my bankers, the said cheque No. 500774 dated 16/11/2013 and the bank returned memo had been misplaced. I say that thereafter, several times, I visited my bank to collect the original cheque and return memo. I say that after addressing my letter, on 27/11/2013 my bank Union Bank, Oshiwara Branch handover me original cheque and return memo. I crave leave to refer and rely upon the copy of letter dated 16/11/2013 addressed by me to my bank. Hereto annexed and marked as Exhibit "1" is the copy of my letter dated 16/11/2013 addressed to my Bank. I say that from the receipt of original cheque and return memo within 30 days I have sent demand notice dated 13/12/2013 upon the Accused. I say that the said facts were incorporated in my demand notice dated 13/12/2013 which is duly served upon Accused. I crave leave to refer to and rely upon the copy of demand Notice dated 13/12/2013 as and when produced.

5. I say that in the above facts and circumstances, due to over sight and bonafide mistake of my earlier advocate, it is mentioned in my examination in chief and letter dated 16/11/2013 is not produced in the list of documents. I say that the said letter is vital document to decide the real controversy between the parties. I say that it is highly necessary that I be allowed to re-examine me by filing additional affidavit of evidence as well as examine my witness i.e. my bank Union Bank, Oshiwara, Jogeshwari (West), Mumbai Branch.

6. I say that in the above circumstances and facts of case and evidence brought on record, it is necessary and appropriate that fair trial required to be given in interest of justice, therefore, the Hon'ble Court be pleased to allow me to

file additional affidavit of evidence by producing vital document i.e. my letter dated 16/11/2013 and further allow me to examine my witnesses i.e. Branch Manager, Union Bank, Oshiwara, Jogeshwari (West), Mumbai Branch, on such terms and condition as this Hon'ble Court may deem fit and proper.”

5. It was the case of the Respondent/complainant that he paid the Petitioner/accused a sum of Rs.3,80,000/- as a hand loan. She issued two cheques towards repayment of the amount. On presentation of the cheques for encashment, cheques returned unpaid. He, therefore, issued a statutory demand notice. There is material on record to indicate the notice to have been served and she did not respond to the notice.

6. The Advocate representing the Petitioner passed away. It has been specifically averred in the petition that the Petitioner banker did not return him original cheque with the bank memo, as the cheque was allegedly misplaced. While the complainant gave his evidence, one of the original cheques was not before the Court. The bank, later on, gave the cheque with the bank memo. The application was, therefore, moved to allow the Respondent/complainant to examine the bank official and himself as well in proof of those facts.

7. In the aforesaid factual backdrop, the trial court allowed the application. This Court finds the trial court to have been justified

in exercise of its discretion in allowing the application. This Court, therefore, is not inclined to even issue notice in the matter.

8. The petition, thus, stands dismissed. The trial court shall not be influenced by the observations made hereinabove.

(R.G. AVACHAT, J.)