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CRR 2086 of 2018

**Sri Sabyasachi Chatterjee
Versus
Sri Sisir Kumar Dutta**

Mr. Tanmay Chowdhury,
Ms. Ritoprita Ghosh ... for the petitioner.

Mr. Ayanabha Bhattacharya,
Ms. Dipanwita Ganguly ... for the O.P.

1. This revisional application has been preferred assailing the judgment and order dated 30.04.2018 passed by the learned Additional Sessions Judge, Fast Track Court, Serampore in connection with Criminal Motion No.89 of 2017 affirming the order dated 24.03.2017 passed by the learned Judicial Magistrate, 1st Class, 5th Court, Serampore in connection with C.R No. 245 of 2009 under Section 138 of the Negotiable Instruments Act.
2. After examination of accused during trial of the case in connection with C.R. No. 245 of 2009, the accused/petitioner was examined under Section 313 of the Code of Criminal Procedure and accused inclined to adduce evidence on his behalf by filing some photocopy of documents for marking on behalf of the accused/petitioner.
3. Learned Magistrate by his order dated 24th

March, 2017 actually decided the admissibility of the documents without marking those photocopy of documents in spite of relying the ratio enunciated in the case of *Bipin Shantilal Panchal Versus State of Gujarat and another* reported in 2001 CRI. L. J. 1254 wherein Hon'ble Apex Court found no illegality in adopting the procedure of marking a document after noting due objection leaving the issue of admissibility at the time of delivering judgment.

4. Learned counsel appearing on behalf of the petitioner has also relied on paragraph 12 of the *Bipin Shantilal Panchal (supra)* which is quoted below:

"12. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of the material in such cases the appellate court would be deprived of the

benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

5. The issue of admissibility is a matter of consideration at the time of delivering judgment and for that reason objection made by a party against documents at the time of admitting evidence by marking exhibits, should not be encouraged.
6. Learned counsel appearing on behalf of the opposite party in his usual fairness has submitted before this court that he has no objection regarding admission of documents for marking exhibits but they have objection regarding admissibility of the documents.
7. Learned Magistrate by his order dated 24th March, 2017 refused to admit the documents by putting exhibits mark and that order further affirmed by the order impugned dated 30.04.2018 passed by the learned Additional Sessions Judge, Fast Track Court,

Serampore.

8. In the aforesaid view of the matter as well as principle observed by the Hon'ble Apex Court in *Bipin Shantilal Panchal (supra)*, I am of the opinion that learned Magistrate ought to have exhibited all those documents with objection subject to admissibility thereof at the time of writing judgment.
9. With the aforesaid observation, the revisional application stands allowed.
10. The order dated 30.04.2018 passed by the learned Additional Sessions Judge, Fast Track Court, Serampore as well as order dated 24.03.2017 passed by the learned Juicial Magistrate, 1st Class, 5th Court, Serampore stand set aside.
11. Learned Magistrate is directed to mark all the documents as exhibits with objection on behalf of the defence and learned counsel on behalf of the opposite party/complainant is at liberty to raise the issue of admissibility of those documents at the time of hearing argument.
12. Learned Magistrate will decide the admissibility of those documents at the time writing judgment and dispose of the case as expeditiously as possible.
10. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.
11. Urgent photostat certified copy of the order, if

applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)