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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.583 OF 2024
WITH
CRIMINAL WRIT PETITION NO. 591 OF 2024

Rushikesh Dattatraya Patil

PETITIONER

VERSUS

Amar Annarao Jadhav and Another

RESPONDENTS

.....
Mr. Raviprasad K. Ashtekar, Advocate for the petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd APRIL, 2024

ORDER:

1. By these petitions, filed under Articles 226 and 227 of the Constitution of India, petitioner challenges orders passed by learned Judicial Magistrate, First Class, Latur below Exhibit-77 and 121 in STCC No. 15 of 2015.
2. Respondent No.1 filed complaint under section 138 of the Negotiable Instruments Act, against petitioner, contending that he had given hand loan of Rs.16 lakh to petitioner. Petitioner had issued cheque No.422281 of Rs.16 lakh dated 21st November, 2014 of ICICI Bank, Ausa Road Branch, Latur. Said cheque was dishonoured and in spite of service of notice, petitioner failed to pay the amount.

3. In the said matter, complainant filed application Exhibit-77 under section 311 of the Criminal Procedure Code on 12th March, 2019, for issuance witness summons to four witnesses, named therein. Petitioner opposed the said application by filing say at Exhibit-85. Trial Court, by order dated 30th September, 2021, allowed the application. Petitioner unsuccessfully challenged the said order by filing Criminal Revision Application No. 35 of 2021. Petitioner has impugned these orders by filing Criminal Writ Petition No. 591 of 2024.

4. By filing application Exhibit-121, complainant prayed that he may be permitted to re-examine himself under section 311 of the Criminal Procedure Code, to prove contents of original documents filed at Exhibit-75. Petitioner opposed this application, stating that the application is filed only to fill up lacuna. Trial Court, by order dated 22nd January, 2024 has allowed the application. This order is challenged by petitioner, by filing Criminal Writ Petition No. 583 of 2024.

5. Heard learned advocate for petitioner. Perused the memo of both the petitions, annexures and the impugned orders.

6. According to petitioner, application Exhibit-77 is filed only to fill up lacuna in the complainant's case and there are no

pleadings in support of which witnesses are sought to be examined. It is submitted that petitioner filed an application seeking forwarding of cheque in question to the handwriting expert to ascertain whether signature appearing on the cheque is of petitioner. Report of handwriting expert is received in favour of petitioner. After receipt of said report, to fill up lacuna, complainant has filed application Exhibit-121 seeking permission to examine himself.

7, It is clear from perusal of documents placed on record that, evidence of complainant is recorded, but evidence closure *pursis* is not filed by him and statement of accused under section 313 of the Criminal Procedure Code, is yet to be recorded.

8. By filing application Exhibit-77, it is contended by complainant that names of witnesses were remained to be mentioned in the complaint, though there is reference that witnesses were present during the loan transaction, in notice and complaint, so also in paragraph No.2 of evidence affidavit. Complainant, therefore, sought permission to examine four witnesses in support of his case.

9. Application Exhibit-77 is allowed by this Trial Court, holding that provisions of section 311 of the Criminal Procedure Code enable the court to determine the truth to render just decision

after discovery of relevant facts and obtaining proper proof of such facts. The case is pending for complainant's further evidence. Complainant has not closed his evidence. "No cross" order was passed below Exhibit-21 on 2nd November, 2018. Therefore, if the application is allowed, no prejudice is likely to be caused to the accused, as he will have the opportunity to cross-examine the witnesses.

10. Trial Court has allowed application Exhibit-121, observing that definitely this is a transaction of hand loan. In view of giving fair opportunity and for just decision on merits, the application deserves to be allowed and no prejudice would be caused to the accused, as accused has opportunity to cross examine the complainant.

11. Trial Court is justified in passing both the impugned orders, by assigning cogent reasons. It is a matter of record that complainant has filed original documents at Exhibit-75 and he wants to examine himself to prove those documents. Fair opportunity needs to be given to the complainant to lead best possible evidence in support of his case. There is no merit in the contention of petitioner that both these applications are moved by complainant to fill up lacuna. Trial Court, at appropriate stage, will decide admissibility and relevancy of evidence led by

complainant. No prejudice is likely to be caused to petitioner, as he will have opportunity to cross-examine witnesses and argue on the point of admissibility and relevancy of the documents sought to be proved by complainant.

12. No case is made out by petitioner to interfere in the impugned orders, in extraordinary writ jurisdiction. Criminal Writ Petitions being devoid of merits, are dismissed.

[NITIN B. SURYAWANSHI]
JUDGE