



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

958 CRIMINAL WRIT PETITION NO. 622 OF 2024

AMOL GORAKHNATH KANCHAR

VERSUS

HARI PUNAJI CHIKSE

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Advocate for Petitioner : Mr. Shinde Dhananjay M.

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CORAM : S. G. MEHARE, J.

DATE : 16.08.2024

PER COURT :-

1. Heard the learned counsel for the petitioner. None present for the respondent.
2. The applicant has impugned the order rejecting the objection to mark the exhibit to a notice under Section 138 of the Negotiable Instrument Act because it was a xerox copy and the details of the cheques were not given. He has referred to the findings of the learned Trial Court on objections.
3. The learned Trial Court has referred to some case laws i.e. *Peacock Industries Ltd. and others Vs. Budhrani Finance Ltd. and others* and *Vardhman Steel Vs. Sai Engineering*, and recorded the findings that if the other side has no objection on the procedure to prove the document, an opportunity may be granted to the other side to correct the defect. In *Bipin*

Panchal's case, the Court has granted an opportunity to correct the procedural defects. When the original document is in the possession of the opposite side and likely to be used against him, then reasons may be made by invoking provisions under Section 66 of the Indian Evidence Act. Further, the findings have been recorded that the secondary evidence under Section 66 of the Indian Evidence Act is not invoked.

4. So far as the objections regarding not supplying the details of the cheque are concerned, it is a matter of merit. So far as exhibiting the notice, which is xerox, if the Court observed that opportunity might be granted to correct the defect, the objections should not have been decided. The stage to cure the defect was yet to come. Therefore, this Court is of the view that the objection for exhibiting the xerox copy of the notice should have been kept open. The Court is not oblivious of the law that all objections raised during the course of recording the evidence should be decided forthwith. However, this case appears exception because the learned trial Court has observed that such defect could be cured at the proper stage of the trial. Therefore, the Court, considering observations and the facts of the case, is of the view that deciding objection forthwith is premature.

5. The writ petition is allowed.
6. The order rejecting the objection to exhibit the xerox copy of the notices stands quashed and set aside and is kept open for argument to both parties on merit.
7. This order does not mean that the right of the complainant to prove the document otherwise is taken away.
8. No order as to costs.

(S. G. MEHARE, J.)

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vmk/-