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911-crwp-1423-24

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 CRIMINAL WRIT PETITION NO. 1423 OF 2024

PRAFULLA JANARDHAN SONAWANE

VERSUS

DHANSAMPADA GRAMIN BIGAR SHETI SAHAKARI PATSANSTHA LTD.
MIDC THROUGH SANDIP GORAKHSHANATH KARDILE

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Advocate for the Petitioner : Mr. Narendra B. Patekar

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 16.10.2024

PER COURT :

1. Heard the learned counsel appearing for the Petitioner at length.
2. By the present Petition, the Petitioner impugned the order dated 20.06.2024 passed below Exhibit-52 and 53 in S.C.C. No. 5169 of 2022 by the learned Additional Chief Judicial Magistrate, whereby the application for recalling of complainant / (C.W.) No.1 under Section 311 of the Code of Criminal Procedure, is rejected.
3. The Petitioner is the original accused and the Respondent is the original complainant in S.C.C. No. 5169 of 2022 filed under Section 138 of the Negotiable Instruments Act. After the charge is framed, on 06.09.2022, the complainant through its authorised person C.W. No.1

filed affidavit-in-evidence at Exhibit 5. After recording further examination-in-chief, the present Petitioner accused fully cross-examined C.W. No.1 on 31.10.2023.

4. As per Roznama, the matter was proceeded on various dates. It appears that, the matter was posted on 12.03.2024 and 20.03.2024 for hearing on Exhibit 49 an application for issue of bailable warrant, because the Petitioner (accused) was remained absent. Thereafter, on 04.04.2024, a Non- Bailable Warrant was issued against the present Petitioner (accused), which was subsequently cancelled on payment of fine. Thereafter, first time, on 20.06.2024, the present Petitioner (accused) filed Exhibit-52 an application under Section 311 of the Code of Criminal Procedure for recalling of the witnesses. The Petitioner also filed Exhibit-53 an application for recalling of the order passed below Exhibit-52. On 20.06.2024, the learned Additional Chief Judicial Magistrate passed the impugned order and rejected both applications Exhibit 52 and 53, on the ground that previously, the opportunity was given to the learned counsel for the Petitioner (accused) for cross-examination of C.W. No.1, but cross was not completed, however, by the present application the accused wanted to fill up the lacuna for recalling of the complainant witness No.1, on the basis of certificate

dated 24.11.2023 issued by the Branch Manager of State Bank of India, Rahuri to show that as per Circular No. R&DB/BOD-GB/22/2021-22, dated 26.07.2021, in clearing module, Multi City Cheques (MCC) for saving bank account will be paid up to Rs.10 Lacs only, which does not co-relate with the offence of dishonor of cheque.

5. Section 311 of the Code of Criminal Procedure provides that any Court may at any stage of any enquiry, trial or other proceeding can summon any person as a witness or may examine any person though not summoned as a witness or may recall and re-examine any witness already been examined. However, said powers cannot be exercised to give permission to the Accused to fill up the lacuna which has been kept in cross-examination.

6. In *State Versus N. Seenivasagan (2021) 14 SCC 1*, the Hon'ble Supreme Court held that, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any Court may, at any stage of any inquiry, trial or other proceedings under CrPC, summon any person as a witness, or examine any person in attendance, though not summoned

as a witness, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person “if his evidence appears to it to be essential to the just decision of the case”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.

7. In the case in hand, the Petitioner wanted to refer the certificate dated 24.11.2023 issued by the Branch Manager, S.B.I., Rahuri, to C.W. 1, which has been subsequently obtained. The said certificate is not related to the subject matter of the cheque. Therefore, I do not find substantial ground to interfere with the impugned order.

8. Accordingly, the Petition is dismissed.

(Y. G. KHOBRADE, J.)

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