



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

82 CRIMINAL WRIT PETITION NO. 1819 OF 2023

LAXMIKANT@ ATUL BHASKAR THAKUR
VERSUS
DATTATRAY VISHWANTAH MULEY

...
Advocate for the Petitioner : Mr. Kokad Amol Ashok
Advocate for Respondent : Mr. Pathan Sherkhan N.

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 20th FEBRUARY, 2024.

PER COURT :-

1. The petitioner is seeking following relief :-

“C. That the order dated 23.11.2023 passed by 10th Judicial Magistrate First Class, Aurangabad below Exhibit-53 in S.C.C. No.9322/2016 be quashed and set aside and application below Exhibit-53 may kindly be allowed as prayed.”

2. S.C.C. No.9322 of 2016 is pending in the Court of Judicial Magistrate, First Class, Aurangabad. The application Exhibit-53 is moved by this petitioner for production of copies of mail by which the amount was paid by the complainant/respondent to this petitioner. Application was strongly objected and it was rejected.

3. The learned advocate for the petitioner submitted that the

application was filed under sections 91 and 311 of the Criminal Procedure Code. The application was strongly objected. It was rejected.

4. While rejecting the application, the learned trial Court observed that section 311 of the Criminal Procedure Code is not applicable to those documents which are not on record. Therefore, it is not necessary to recall the witness for cross-examination.

5. The learned advocate for the petitioner submitted that the complainant is not ready to produce the details of payment made to this petitioner-accused, and therefore, the application was moved. He submitted to allow the Writ Petition.

6. The learned advocate for the respondent strongly objected the petition and submitted that the application is rightly rejected by the trial Court and section 311 of the Cr.P.C. is not applicable and it cannot be used for filling up lacuna and to recall witnesses for cross - examination again and again.

7. Perused the application and impugned order. In last para, the learned trial Court has rightly held that section 311 of the Cr.P.C. is not applicable. The petitioner – accused is trying to

establish from the documents of the complainant/respondent that there was no such amount which allegedly paid by him to this petitioner-accused. If that is so and alleged documents are not produced by the respondent/complainant then as per section 114 illustration (g) adverse inference can be drawn against the complainant, but it is a matter of evidence and the trial Court may draw such inference and sufficient material regarding that was brought on record by the petitioner-accused during cross-examination of the respondent/complainant. Considering all these aspects, there is no legal and factual ground to interfere with the impugned order. Petition, therefore, deserves to be dismissed. It is dismissed accordingly.

(SANJAY A. DESHMUKH, J.)

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