

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1286 OF 2016

M/s. NSS Associates
Thr. Prop. Radheshyam Mundada ...Applicant
Versus
The State Of Maharashtra And Ors. ...Respondents

....

Mr. Madhukar Dalvi a/w Mr. Shivam Dube, Advocate for the Applicant.

Mr. Y.Y. Dabake, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th JANUARY, 2024.

P.C.:

1. None for Respondent Nos.2 and 3.
2. The Applicant is the original complainant in Summary Case No.5321 of 2007 pending before the Court of Learned J.M.F.C. at CBD Belapur in relation to the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I. Act'). Respondent Nos.2 and 3 were arraigned as Accused in the said complaint. The trial has commenced. The complainant examined his witnesses. The statement of the Accused was recorded under Section 313 of Cr.P.C. The Accused examined himself as defence witness. In the examination-in-chief, the Accused has contended that blank cheques which were kept by the Accused in his office were stolen and on the very next day he lodged the complaint with Neral Police

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Station. The Accused was cross-examined at the instance of complainant and specific suggestion was put to him that his contention that the cheques were stolen and that he lodged the complaint to the Police Station was false. The Applicant/complainant preferred an application under RTI to ascertain whether any such complaint was lodged with the concerned Police Station by the Accused. The reply was received through RTI confirming that no such complaint was lodged by the Accused. The cross-examination of the Accused was completed and thereafter, the Petitioner/complainant preferred an application for adducing the reply received through RTI in evidence. The learned Magistrate rejected that application vide Order dated 21st January, 2016 on the ground that requisite procedure is required to be complied for adducing the documents in evidence. Pursuant to the said Order the Petitioner preferred an application for issuance of witness summons to the concerned witness to enable the Petitioner to adduce the aforesaid document in evidence. The said application has been rejected by learned Magistrate vide Order dated 3rd September, 2016 on the ground that the complainant is trying to fill up the lacuna.

3. Learned Advocate of the Applicant submitted that it was the defence of the Accused that he had made a complaint to the Police Station about the theft of his cheques. It was subsequently revealed that no such complaint was filed which is material fact required to be brought on record by the Applicant. The learned Magistrate has committed an error in rejecting the application on the ground that the Applicant is trying to fill up the lacuna.

4. Perused the documents on record and impugned Order, the Applicant is the original complainant. After the evidence of the complainant was recorded, the Accused examined himself as defence witness pursuant to the statement under Section 313 of Cr.PC. The specific defence of the Accused is that the cheques in question were stolen and that he had lodged the complaint in that regard. Pursuant to the cross-examination of the Accused the Applicant/complainant preferred an application through RTI to ascertain whether such complaint was lodged by the Accused and information was received that there was no such complaint was lodged by the Accused about theft of cheques. In this circumstances, the Applicant preferred an application under Section 311 of Code of Criminal Procedure. It is settled law that the such application can be preferred any time before the trial is

concluded for the just decision of case. In the interest of justice, the trial Court ought to have allowed the application. In consonance with the defence of the Accused the complainant was required to prefer such an application for adducing the information which were received through RTI. It cannot be said that the complainant was trying to fill up the lacuna. It was open to the Court to decide the probative value of those document at appropriate stage. Considering the aforesaid circumstances, the impugned order is required to be set aside.

ORDER

- i. Criminal Application No.1286 of 2016 is allowed;
- ii. Impugned Order dated 3rd September, 2016 passed by learned J.M.F.C. Vashi, Navi Mumbai is set aside.
- iii. The Applicant preferred by the Applicant vide Exh.170 for issuing summons to the witness is allowed. The trial Court shall issue the summons to the witness and proceeding with the case in accordance with law.
- iv. Application stands disposed off.

(PRAKASH D. NAIK, J.)