



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1199 OF 2023

Bhulaxmi Poultry Farm

Rep. By Partner Mr. Kunde K. Kistaiah
and another

.. Petitioners

Versus

M/s. Pradeep & Co. General Merchants
And Commission Agents

Rep. By Its Prop. Pravin Pradeep Bargle

.. Respondent

Mr. Fayaz K. Patel, Advocate for the Petitioners.

Mr. Swapnil S. Rathi, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 13th JUNE, 2025.

P. C. :-

. Heard the parties. Taken up for final disposal at the stage of admission.

2. By way of filing this writ petition, the petitioners/original accused have come challenging an order dated 08.05.2023 passed by the learned J.M.F.C., Latur in S.C.C. No. 2441/2015 thereby application of the respondent/complainant under Section 311 of the Code of Criminal Procedure (for short "Cr.P.C.") is allowed for recall of witness.

3. The learned advocate for the petitioners submits that, the

respondent has lodged a case under Section 138 of the Negotiable Instruments Act (for short “N. I. Act”) in the year 2015. The complainant laid his evidence. Thereafter, again he filed an application in the year 2019 under Section 311 of the Cr.P.C. that was allowed. After completion of the evidence of the complainant and after recording statement of the accused under Section 313 of the Cr.P.C. two defence witnesses have also been examined. It is at this stage second time the application came to be filed under Section 311 of the Cr.P.C. only to prove the documents. He submits that, the learned Judge thus has heard in allowing the application for second time. He relied upon the judgment in the case Niketan Dilip Paldhe Vs. State of Maharashtra and others reported in 2022 DGLS (Bom.) 5365. In the said case, the application under Section 311 of the Cr.P.C. was allowed and the witness was recalled. This was second time in the same trial. This Court by way of the judgment set aside the order. The learned advocate thus submits that this judgment is clearly applicable to the facts of the case and prays for allowing the writ petition.

4. The learned advocate Mr. Rathi for respondent vehemently opposes the petition. He submits that, the application was not for recall of the witness as such and not for filling up the lacuna in prosecution case. It is only that, in the application itself it is stated

that, some of the documents i.e. one lorry receipt of bill dated 30.03.2013 is not exhibited though the same is produced. One more bill dated 17.07.2013 is also not exhibited. He thus submits that, the complainant is not giving any fresh evidence as such, but only wants to exhibit the documents which are already on record. He relies upon the judgment in the case of Shakil Ahmad Akil Ali Vs. Kishor Rameshchandra Mundada & Anr. reported in 2014 All MR (Cri) 985.

In the said case, this Court considered the only question as to whether further opportunity should be given to the complainant to prove the documents which had been tendered by him in the Court, but were not proved, marked or exhibited. In that view of the matter, the order passed by the Magistrate allowing the application under Section 311 of the Cr.P.C. was upheld by directing to pay some cost to the accused.

5. This Court has considered the judgments. In the present case, what appears is that the application is not for bringing any fresh evidence or new evidence, but is only to exhibit the documents which are already on record. What is noted by this Court is only that, the application is filed at belated stage. The learned advocate for the petitioners has rightly pointed out that the accused is required to come from Hyderabad to attend the dates in the Court at Latur. This certainly has caused inconvenience. The learned Trial Court has

allowed the application by directing cost of Rs. 1,000/- (Rs. One Thousand only). This Court finds that, the accused is required to come from Hyderabad to Latur on every date. The cost appears to be much lesser.

6. Considering the hardship that was caused to the accused, this Court modifies the order by replacing the order of cost of Rs. 1,000/- (Rs. One Thousand only) by amount of Rs. 20,000/- (Rs. Twenty Thousand only) to be paid to the accused within two (02) weeks from today. Further, the complainant shall complete his exhibiting of the documents in one day. If the accused wants to cross-examine, the same shall be done on the same day. Henceforth, the complainant shall not seek any adjournment. Both the parties shall ensure that, case is not adjourned because of them unnecessarily. The learned Trial Court is expected to complete the trial and to dispose of the S.C.C. No. 2441/2015 as early as possible.

7. With this, the criminal writ petition stands disposed of.

(KISHORE C. SANT, J.)

P.S.B.