

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

Criminal Application No.1141 of 2024

Sunil Bhimrao Salve

Age : Adult, Occ.: Agriculturist,
Zone No.156, Near C-Line,
R C Road, Near Model High School,
Chembur (East), Mumbai,
Maharashtra, India - 400 074

... Applicant

versus

1. Hema Sharad Badekar

Age : Adult, Occ: Agriculturist,
Kirvali, Taluka - Karjat,
District - Raigad.

2. Sharad Badekar

Age : Adult, Occ: Agriculturist,
Kirvali, Taluka - Karjat,
District - Raigad.

3. The State of Maharashtra

... Respondents

Mr Ramkumar Pugaliya, along with Ms Chandani Shaikh and
Mr Ramani R Shenoy i/b Parks Legal, for the applicant.

Mr Jugal Kanani, for respondents No.1 and 2.

Mr MG Patil, APP, for respondent No.3/ State.

Coram: R.N. Laddha, J.

Date: 21 April 2025

P.C.:

By this application, the applicant (accused) seeks to challenge the common order dated 15 April 2024 passed by the learned Additional Sessions Judge, Panvel, in Criminal Appeals No.2 of 2020 and 3 of 2020, whereby the applicant's applications under Sections 391 read with 386 of the Code of Criminal Procedure, 1973 ('CrPC'), was rejected.

2. Heard Mr Ramkumar Pugaliya, the learned Counsel appearing on behalf of the applicant, Mr Jugal Kanani, the learned Counsel appearing for respondents No.1 and 2, and Mr MG Patil, the learned Additional Public Prosecutor representing respondent No.3/ State.

3. The learned Counsel appearing for the applicant submits that on 16 August 2016, the defence witnesses could not depose before the trial Court due to medical reasons and other unavoidable circumstances. However, the trial Court failed to consider these factors and proceeded to close the defence evidence on 14 October 2016. During the cross-examination, respondent No.1 admitted having no personal knowledge of any financial transactions involving the applicant. Furthermore,

no documentary or oral evidence was produced to substantiate the existence of such transactions. The learned Counsel argues that the refusal to permit the examination of defence witnesses amounts to a violation of the applicant's right to a fair trial and could result in a miscarriage of justice.

4. On the other hand, the learned Counsel appearing on behalf of respondents No.1 and 2 opposes the application, asserting that the complaint was instituted in 2012 and culminated in the applicant's conviction in 2017. He points out that the applicant was afforded ample opportunities throughout the trial to present his defence but failed to do so. The learned Counsel further submits that the applicant did not challenge the conviction until January 2020, when he preferred appeals before the learned Sessions Court. It was only in February 2024, more than four years later, that the applicant filed applications under Section 391 of CrPC seeking permission to lead additional evidence. These applications were rejected by the learned Sessions Court on 15 April 2024. Thereafter, the applicant approached this Court only on 29 August 2024. The learned Counsel contends that this conduct clearly indicates an attempt to delay the proceedings and, therefore, the application ought to be dismissed.

5. The learned Additional Public Prosecutor representing respondent No.3/ State submits that the Court may pass appropriate orders based on the facts and circumstances of the case.

6. This Court has given its thoughtful and detailed consideration to the rival submissions advanced at the Bar.

7. It is a settled position in law that the presumptions under the Negotiable Instruments Act, 1881 ('NI Act'), operate in favour the complainant. The burden of rebutting these presumptions lies squarely on the accused, and it is not the duty of the Court to assist the accused in adducing such evidence. Moreover, the power to record additional evidence at the appellate stage under Section 391 of the CrPC is discretionary and must be exercised cautiously and only in exceptional circumstances. Such discretion may be invoked in cases where: (i) the party unable to present the evidence despite exercising due diligence during trial, or (ii) the necessity to record additional evidence emerges subsequently, and the omission to do so is likely to result in a failure of justice. In this context, reference may be made to the decision of the Hon'ble Supreme Court in *Ajitsinh Chehuji Rathod Vs. State of Gujarat*, (2024) 4 SCC 453.

8. Upon perusing the records, it transpires that complaints bearing SCC No.187 of 2012 and SCC No.189 of 2012 were filed before the Judicial Magistrate First Class, Karjat, Raigad, alleging the commission of the offence punishable under Section 138 of the NI Act. After recording the statement of the applicant under Section 313 CrPC, he was granted multiple opportunities to lead defence evidence. Despite this, no witnesses were examined, leading to the trial Court to close the defence evidence in 2016. Subsequently, after hearing final arguments, the trial Court, by its judgments and orders dated 17 January 2017, convicted the applicant. It is significant to note that the applicant took no initiative during the intervening period to seek examination of the defence witnesses. The appeals challenging the conviction were filed only on 3 January 2020, and the applications under Section 391 CrPC were preferred even later, on 22 February 2024. These applications were rejected on 15 April 2024, and the applicant approached this Court on 29 August 2024 without furnishing any explanation for the delay. The medical papers produced by the applicant are not in consonance with the applicant's claim. The records neither reveal any compelling or justifiable reason that would have prevented the applicant from adducing evidence during the trial nor does it establish the existence of any circumstances that would warrant the recording of evidence at

the appellate stage. The applicant's approach does not reflect the conduct of a prudent litigant; rather, it appears to be an attempt to protract the proceedings unnecessarily.

9. In light of the above, this Court finds no merit in the present application. Accordingly, the same stands dismissed with a cost of Rs.25,000/- to be deposited with the High Court Legal Services Authority within two weeks from the date of this order. Considering the prolonged pendency, the appellate Court is requested to expedite the hearing of the appeals.

(R.N. Laddha, J.)