

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

WRIT PETITION NO.3394 OF 2025

LAXMI
SUBHASH
SONTAKKE

Narendra B. Patil

...Petitioner

V/s.

Techno Four Combines Pvt. Ltd.

...Respondent

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Mr. Rajput Malik Faisal i/b. A. J. Rajbhar	Advocate for Petitioner.
Mr. Shubham More a/w Anikhet Gole	For the Respondent.
Mr. C. D. Mali	APP for Respondent – State.

CORAM : S. M. MODAK, J.

DATE : 1st JULY 2025

P. C. :-

1. Heard the learned Advocate for the Petitioner-accused and learned Advocate for Respondent-complainant. By consent matter is heard finally an the admission stage.

2. The only issue involved in this Writ Petition is whether the learned Magistrate was justified in recalling the witness of the Complainant-company. The said order is passed on 10th July 2024. The

witness is recalled. The private complaint is filed for commission of an offence under Section 138 of the Negotiable Instrument Act, 1881. This order is passed in an Application moved by the complainant. Admittedly, this Application is filed at the stage when the parties have started with the arguments.

3. With the assistance of the learned Advocate, I have gone through the record. It is true that there are findings on the aspect against the complainant. The learned Judge allowed the application by imposing the costs. There is a challenge to the said order.

4. The learned Advocate for the Petitioner relied upon the following two Judgments:-

i. Nayna Rajan Guhagarkar Vs. The State of Maharashtra in Criminal Writ Petition No. 1658 of 2021; and

ii. Niketan Dilip Paldhe Vs. State of Maharashtra & Anr. in Criminal Writ Petition No. 3369 of 2022.

5. I have gone through the Judgment in the case of **Nayna Rajan Guhagarkar (supra)**. The learned Single Judge of this Court allowed the Application of the prosecution to examine two witnesses. It was allowed when the prosecution for the offence punishable under the

Prevention of Corruption Act was initiated against the Petitioner. Learned Single Judge of this Court set aside the order and observed that the power under Section 311 cannot be used to fill in lacunae in the prosecution evidence. Whereas, in the case of **Niketan Dilip Paldhe (supra)**, the learned Single Judge of this Court set aside the order thereby recalling the complainant for producing certain documents. In that case, a similar application was allowed earlier by the learned Magistrate. The learned Single Judge considered this application as one of the reason for setting aside the said order.

6. According to the learned Counsel for the Petitioner, the observations in two Judgments are perfectly applicable to the facts involved in this Petition.

7. It is submitted by the learned Advocate for the Respondent that what is sought to be produced are copy of the resolution dated 9th December 2022 and copy of minutes book. According to him, these documents were not prepared subsequently but they were in existence at the time of filing complaint. The complaint was filed on 31st January 2023. He relied upon the observations of the Hon'ble Supreme Court in the case of ***K. P. Tamilmaran Vs. The State by Deputy***

Superintendent of Police. He specifically relied upon the observations in para No. 47 of the said Judgment.

8. It is true Section 311 of the Cr.P.C. is in two parts. **The first part** of the Section gives a discretion to a Court, whereas, as per **the second part**, the Court is bound to exercise its powers under Section 311 of the Cr.P.C. when the evidence appears to be essential for a just decision of the case. The present case does not fall in the second part. It will fall under the first part. It is true in the first part, no guidelines are given by the legislature when such power can be exercised. Ultimately, it is a discretion of the Judge depending upon the circumstances of the case. When there is a discretion, it has to be exercised judicially.

9. Now coming to the facts of this case, it is a matter of record that the complainant's witness Mr. Rajesh Rane was cross-examined and has stated that he has not filed any document which shows that he has been authorized by the company to file the complaint and to depose on its behalf. It is true after the cross examination, evidence was closed and the statement was recorded under Section 313 of Cr.P.C. So if we go by evidence on record, it is true that these documents were not filed immediately after Mr. Rajesh Rane was cross-examined.

10. So the question is, **in which case the discretion can be exercised in favour of the complainant.** There are two aspects: (i) When the first part permits the Court to exercise the power at any stage, there is nothing wrong on the part of the Applicant in filing the application at the fag end also (ii) Whether the prayer can be accepted for that purpose.

11. It is important to consider what is the nature of the documents sought to be produced. It is nothing but the minute book and copy of resolution passed therein. As stated above, in the averments in the complaint about these documents, there is an averment in the complaint that one Mr. Rajesh Rane is the Director of the Respondent-company and that is described in the title clause of the complaint. It is also true that the accused who is the employee of the company, as per the averments in the complaint, has denied the relationship of the witness with the company being the Director. These documents goes to the root of the matter and outcome of the case will be depend upon these documents. That is to say, if these documents are not allowed to be produced on record, the outcome of the case may be against the complainant.

12. It is a settled law that the evidence adduced can be only before the Trial Court, Only with certain exceptions evidence can be adduced before the Appellate Court. Considering all the facts, I feel that the learned Judge was right in allowing the Application. The Court should make an endeavour that parties be given an opportunity to adduced evidence during the trial only. If we consider from the perspective of the accused, certainly he has got a right to challenge these documents by way of cross examination. All the grounds are available to him including challenging the authenticity of these documents. So, I am inclined to confirm the said order. Ultimately, the trial Court is going to decide the matter only after this evidence is recorded. At the most, I feel that the costs imposed by the trial court is on lower side. I am inclined to increase the costs to Rs. 10,000/-.

13. In that view of the matter, I do not find any merit in the Petition. The observations made in the above two Judgments given by the learned Single Judges of this Court are on the basis of the facts of the case. I dismiss the Petition with direction to the Complainant to pay the costs of Rs. 10,000/- (which includes original cost) to the accused within a period of two weeks from the date of uploading the order.

14. The Trial Court to proceed with the matter only after the costs is paid.

[S. M. MODAK, J.]