

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5061 OF 2025**

Lourdes Veronica Baptista ..Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

Mr. Subodh Desai a/w Kartik Garg, for the Petitioner.
Mr. R. S. Tendulkar, AGP for State.
Mr. Ramprasad Gupta a/w Mr. Rohit Vaishya & Ms. Shraddha
Rathod, for Respondent No. 2.
Mr. Mohan Rao, for Respondent No. 5.

CORAM: N. J. JAMADAR, J.
DATE : 02nd DECEMBER 2025

ORDER:

1. This petition under Article 227 of the Constitution of India assails an order dated 02nd September, 2025 passed by the learned Additional Chief Judicial Magistrate, Andheri, Mumbai whereby an application under Section 242(2) of the Code of Criminal Procedure, 1973 ('the Code, 1973') seeking permission to produce thirty five documents, came to be rejected.

2. The petitioner is first informant in CR No. 12/2017 which culminated in the final report for the offences punishable under Section 120-B, 420, 465, 467, 468, 469 and 471 of the Indian Penal Code, 1860. The Respondent Nos. 2 to 6 are the accused

who are facing the trial for the commission of the aforesaid offences in CC No. 1184/PW/2017.

3. The petitioner filed an application seeking permission to produce documents purportedly under Section 242 of the Code, 1973. It was *inter alia* contended that, the documents enumerated in the said application were relevant and necessary for a just decision of the case. Those documents would throw light on the alleged acts committed by the accused and thereby substantiate the indictment against the accused.

4. By the impugned order, the learned Magistrate was persuaded to reject the application observing *inter alia* that, recourse to the provisions contained in Section 242 of the Code, 1973, to produce original documents of which photocopies were already on record, was impermissible in view of the decision of this Court in the case of **Mangesh Shyamrao Gulhane Vs. The State of Maharashtra**¹. It was further opined that, the application was beyond the scope of Section 242(2) of the Code, 1973, with presupposes that the documents sought to be produced were not part of the charge-sheet.

1 AIR Online 2021 Bom 4083

5. Mr. Subodh Desai, the learned Senior Advocate for the petitioner, would urge that, the learned Magistrate has completely misconstrued the ratio of the judgment in the case of **Mangesh Gulhane (supra)**. The decision of the Karnataka High Court in the case of **B. L. Udaykumar & Ors. Vs. The State of Karnataka²**, clarifies the scope of the provisions contained in Section 242 especially sub-Section (3) thereof that, the expression “the Magistrate shall proceed to take all such evidence”, cannot be given a restrictive meaning so as to hold that only such documents as relate to those of persons who were examined by the Police or only the documents collected during investigation could be produced before the Court. To read the section in such a restricted manner would amount to reading into the sub-section something which is not there.

6. As against this, Mr. Ramprasad Gupta, the learned Counsel for Respondent No. 2 and Mr. Mohan Rao, the learned Counsel for Respondent No. 5, supported the impugned order. It was submitted that, the first informant had no locus to tender the application for the production of documents. It was strongly refuted that, the application in question was filed by the prosecution. Attention of the Court was invited to an order

2 AIR Online 2018 Kar 695

dated 30th August, 2025 passed by the learned Magistrate calling upon the learned APP to submit as to why the first informant had moved the said application, directly. On this count alone, the challenge to the impugned order deserves to be rejected, submitted Mr. Gupta. It was further submitted that, the prosecution has failed to satisfy the test of relevancy of the documents sought to be produced by the first informant for a just decision of the case. The learned Magistrate was thus fully justified in rejecting the application.

7. Section 242 of the Code reads as under:

“242. Evidence for prosecution – (1) if the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under Section 241, the Magistrate shall fix a date for the examination of witnesses:

[Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recording during investigation by the police.]

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”

8. In the case of **Mangesh Gulhane Vs. State of Maharashtra (supra)**, a learned Single Judge of this Court after noting the decision of the Karnataka High court in the case of **B. L. Udaykumar (supra)** enunciated that, “*Plain language of section 242 would reveal that the Magistrate is empowered to take all such evidence as may be produced in support of the prosecution. The wide language employed in sub-section (3) indicates that the power is not restricted to the consideration of the documents which are filed alongwith the charge-sheet. In may considered view, to read the provision, as restricting the power of the Magistrate to consider only the documents which are collected during the investigation, would be to do violence to the legislative intent as discernible from the plaint language of the provision. I am not suggesting, even for a moment, that the power to permit the prosecution to place on record additional*

documents is absolutely unfettered or blanket. It is axiomatic that the documents which are sought to be produced on record should be relevant for just decision and that the accused is not prejudiced.”

9. In the case at hand, this Court refrains from delving into the question whether, the learned Magistrate could have permitted the production of the documents under sub-Section (3) of Section 242 of the Code, 1973. The Court finds that, the initial application was not made by the Public Prosecutor. Therefore, the learned Magistrate had directed the Public Prosecutor to make submissions as to why the informant had moved the application for production of the documents directly. It appears that, the learned Public Prosecutor has thereafter put endorsement on the application. Evidently, the documents which were sought to be tendered by the first informant, were not coming from the custody of the Investigating Officer. *De hors*, the applicability of the provisions contained in Section 242(3) of the Code, 1973, it becomes explicitly clear that, an application seeking production of documents in a warrant triable case, at the instance of the State, ought to have been made by the Public Prosecutor, who is in the carriage of the prosecution. The first informant, on his own, cannot tender the

documents with a request to accept and mark those documents in evidence.

10. The order of the learned Magistrate calling upon the prosecution to submit as to why the first informant had moved the application directly, makes it beyond cavil that, the application (Exh. 90) was not preferred by the Public Prosecutor. The act of production of the documents under Section 242 of the Code, 1973 cannot be construed as a ministerial act. The Public Prosecutor was required to apply his mind as to which of the 35 documents, sought to be tendered by the first informant, were relevant for the adjudication of the guilt of the Respondent Nos. 2 to 6 - the Accused. The Public Prosecutor is not expected to discharge his functions at the desire and will of the first informant. An independent application of mind by the Public Prosecutor was, therefore, necessary before the application for production of documents, came to be endorsed by the Public Prosecutor.

11. It is true, the learned Magistrate appears to have misconstrued the ratio of the decision in the case of **Mangesh Gulhane (supra)** and observed that original documents, the photostate copies which were already on record, cannot be produced by resorting to the provisions contained in Section

242 of the Code, 1973. Nonetheless, in the light of the view, this Court is persuaded to take, it would be expedient in the interest of justice to provide an opportunity to the Public Prosecutor to file an application for permission to produce documents under Section 242 of the code, 1973, after applying his mind to the necessity of each of those documents for a just decision of the case.

12. Therefore, the impugned order deserves to be quashed and set aside and the Public Prosecutor granted liberty to file an application seeking permission to produce the documents which the Public Prosecutor finds relevant. Hence, the following order:-

::ORDER::

- (i) The petition stands partly allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The learned Public Prosecutor, who is entrusted with the trial CC No. 1184/2017, is permitted to file an application to produce documents/additional documents, after applying his mind to the necessity of the production of the documents.
- (iv) In the event, such an application is filed, the learned Magistrate shall decide the same on its own

merits and in accordance with law, without being influenced by the observations made by this Court in the instant order or the observations in the impugned order (Exh. 90), as expeditiously as possible.

(v) In the circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.]