



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1092 OF 2024

M/s Sai Auto Agencies, through Partner Dyandeo S/o Ramdas Rane .Vs. State of
Maharashtra and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.N. Badhe, Advocate for applicant.

Mr. U.R. Phasate, A.P.P. for non-applicant/State.

Mr. J.B. Gandhi, Advocate for non-applicant No.2.

CORAM : ANIL S. KILOR, J.

DATED : 13/03/2025

1. The applicant herein is the informant who lodged a report against the non-applicant No.2 for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code.

2. After filing of the chargesheet and during recording of the evidence, application for secondary evidence was moved by the prosecution under Section 65 of the Evidence Act, 1872. In the said application, it is stated that, on 23.08.2019, when the informant was coming to the Court during the transit he lost his bag having original tax invoices of customers.

3. It is further stated that, the photocopies of these documents are the part of the chargesheet. The application was moved along with complaint lodged to the police station on 23.08.2019.

4. The learned trial Court after hearing both the parties, allowed the application Exh.60 vide order dated 01.08.2023, by recording reasons in paragraph 4, which read thus :-

“4. Perused the application and say filed on it. Also perused record of the case. Heard both the sides. The present application has been filed by the prosecution for leading secondary evidence as the original documents have lost. According to the prosecution the complaint has also been lodged for missing of bag in which the relevant documents were kept. Perusal of the record shows that the copy of said complaint dated 31-05-2010 is filed along with the chargesheet by the investigating officer. The said complaint has been lodged to the Gadge Nagar Police Station about missing of bag. Perusal of the record also shows that the present complaint has been lodged in the year 2012 i.e. after lodging the missing report of the documents. Therefore, it cannot be said that the story of the complainant about missing of document is concocted and after thought.”

5. The accused feeling aggrieved by the said order dated 01.08.2023, preferred Criminal Revision Application No.106 of 2023. The learned Sessions Judge allowed the revision petition in favour of the accused and set aside the order passed by the learned Magistrate.

6. The perversity committed by the learned Magistrate and as recorded by the Revisional Court, it is evident that the learned Magistrate had taken into consideration and relied upon the complaint dated 31.05.2010, which was not filed by the applicant herein but it was made by one Shri Wakode and the said complaint was

not in respect of missing of original invoices but it was relates to the original cheques.

7. As far as the complaint lodged by the applicant on 23.08.2019 is concerned, there is no whisper or mention of it in the whole order of the Magistrate which demonstrates that the Magistrate has at all not taken into consideration the complaint of the applicant dated 23.08.2019.

8. Thus, I do not find any error committed by the learned Revisional Court setting aside the order of the Magistrate.

9. Therefore, I am of the opinion that, a fresh consideration is required. Accordingly, the application is **partly allowed** with direction to the learned Magistrate to decide the application Exh.60 afresh after taking into consideration the relevant record.

10. Accordingly, the application is **disposed of** in above referred terms. All the points are kept open.

JUDGE