



Judgment

411 wp858.24

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION NO.858 OF 2024**

Chandrakant Govindrao Udakhe,  
aged about 65 years, occupation: business,  
r/o near New Shrikrushna Mandir, Mata  
Khidki, Amravati, taluka  
and district Amravati. .... **Petitioner.**

**:: VERSUS ::**

Pradeep Namdeorao Kalaskar,  
aged about 48 year, occupation: business,  
r/o plot No.15, Purushottam Nagar,  
Akoli Road, Amravati, taluka and district  
Amravati. .... **Respondent.**

**Shri S.S.Alaspurkar, Counsel for the Petitioner.  
Shri S.B.Gandhe, Counsel for the Respondent.**

**CORAM : URMILA JOSHI-PHALKE, J.**  
**CLOSED ON : 12/06/2025**  
**PRONOUNCED ON : 17/06/2025**

**JUDGMENT**

1. Heard learned counsel Shri S.S.Alaspurkar for the  
petitioner and learned counsel Shri S.B.Gandhe for the

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respondent. **Rule.** Heard finally by consent of learned counsel appearing for parties.

2. By this petition, the petitioner has challenged order dated 13.3.2024 passed below Exh.84 by learned JMFC, Court No.2, Amravati and sought direction to exhibit documents filed on record.

3. Brief facts necessary for disposal of the petition are as under:

The respondent and the petitioner are well acquainted with each other. On 4.12.2012, the petitioner sold one house to the respondent consisting of first floor with three rooms situated at Amravati for consideration of Rs.37,61,000/-. As the consideration amount was not paid by the respondent, the petitioner has demanded the amount on several occasions. The respondent convinced the petitioner that he would obtain loan from bank and

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pay the total consideration amount. He processed the loan application with the Bank of Baroda, Shyam Square, Amravati and the petitioner stood as guarantor to the loan amount. The respondent informed that the loan was not sanctioned in his favour and, therefore, he applied with the Dharampeth Mahila Multistate Cooperative Society Limited for the loan and obtained his signatures as surety. Thereafter, he informed that the loan was sanctioned. In the meanwhile, the petitioner was arrested by the police and it revealed to the petitioner that the respondent committed fraud on the basis of forged documents and criminal case is registered vide Crime No.111/16 under Sections 420, 467, and 468 read with 34 of the IPC. After releasing the petitioner on bail, on demand of the consideration amount, the respondent issued Cheque bearing No.001477 dated 18.7.2016 of Rs.30.00 lacs drawn on the State of Hyderabad, Branch at

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Badnera Road, Amravati. The said cheque was deposited, but the same was returned “unpaid” with an endorsement “account closed” and, therefore, the petitioner issued Notice. After receipt of the Notice, the respondent has not paid the amount. The petitioner was constrained to file complaint under Section 138 of the Negotiable Instruments Act bearing No.4441/2016. In the said complaint, the petitioner as well as the respondent both have adduced evidence. After recording of the statement of the respondent under section 313(1)(b) of the CrPC, the petitioner filed an application seeking permission to produce documents on record and the same was allowed by passing order below Exh.68 along with the list of documents Exh.69. The documents were certified copies of Exh.1 of Regular Civil Suit No.48/2019, certified copy of chargesheet filed in RCC No.577/2018, and certified copy of chargesheet filed in RCC No.701/2018.

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4. The petitioner, thereafter, filed an application below Exh.84 for exhibiting the said documents. However, learned Judge of the trial court has rejected the said application. The petitioner has also filed another application below Exh.87 seeking permission to place on record documents i.e. dated 13.11.2013 and bank return memo dated 2.12.2012 in respect of another transaction to show *modus operandi* of the respondent. However, the said application is rejected by learned Judge of the trial court observing that though these documents wherein possession of the complainant since filing of the complaint the same were not brought on record and also observed that the said documents are contrary to the document sale deed which shows that the petitioner has received entire consideration amount in cash.

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5. Learned counsel for the petitioner submitted that documents filed in view of order below Exh.68 are public documents. These documents are certified copies either of the court proceedings or the criminal complaints filed against the respondent. Being the said documents maintained during course of discharging official duties, being public documents, require to be exhibited directly.

6. *Per contra*, learned counsel for the respondent submitted that mere exhibition of documents is not sufficient. The petitioner has to adduce evidence in support of the contentions.

7. After hearing both the sides and perusing of the relevant material, it reveals that vide Exh.68, the petitioner has filed an application for placing on record certified copy of the plaint of civil suit which is filed against the respondent. Thus, it is certified copies

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obtained from the court as to the judicial proceeding filed against the present applicant. In view of Section 74 of the Indian Evidence Act, definition of public documents reads as under:

**“74. Public documents.** The following documents are public documents :-

(1) Documents forming the acts or records of the acts -

- (i) of the sovereign authority;
- (ii) of official bodies and tribunals; and
- (iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth] [The original words "whether of British India, or of any other part of Her Majesty's dominions" have successively been amended by A.O. 1948 and A.O. 1950 to read as above.], or of a foreign country;

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(2) public records kept [in any State] [Substituted by A.O. 1950, for "in any Province".] of private documents”.

8. Considering Sections 74 of the Indian Evidence Act, presumption under Section 79 attracts. The certified copies of the FIRs are filed on record which are public documents. There is a discretion between the record of the court and record of the acts of the court. It is only record of the acts of the court which is public document. The FIR is a document prepared while discharging official duty.

9. Thus, being the above said documents public documents, the same are required to be exhibited and, therefore, the order rejecting the application for exhibition of documents requires to be set aside. These documents ought to have been admitted in the evidence.

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In view of Section 74 of the Indian Evidence Act, the documents mentioned in the Section are public documents. From reading of the aforesaid provisions, it is manifestly clear that a public document is one made by the public officer for the purposes of public making use of it and being able to refer to it. The documents i.e. certified copy of the plaint filed in the court and the certified copies of the FIRs recorded by the police officer while discharging official duty are public documents.

10. As far as the application vide Exh.87 is concerned, admittedly, these documents are filed at the conclusion of the trial i.e. at a belated stage though the petitioner was in possession of the said documents. The petitioner has not assigned any reasons for non-production of the said documents though he was in possession and no explanation is put forth in support of the same and,

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therefore, the writ petition deserves to be allowed partly.

In view of that, I proceed to pass following order:

**ORDER**

(1) The Criminal Writ Petition is **partly allowed**.

(2) The order dated 13.3.2024 passed below Exh.84 by learned JMFC, Court No.2, Amravati is quashed and set aside and learned JMFC is directed to consider the provisions of Section 74 of the Indian Evidence Act to admit the evidence.

(3) The prayer of the petitioner for setting aside the order below Exh.87 is hereby rejected.

Petition stands **disposed of**.

**(URMILA JOSHI-PHALKE, J.)**

!! BrWankhede !!

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