



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

CRIMINAL APPLICATION (APL) NO.1688/2024

Bhupendra s/o Pralhad Chavan

Vs.

GRC Jewellers, Through its Proprietor, Mr. Gokul Rameshchandra Chavan

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

Court's or Judge's orders

Shri PR. Agrawal, Advocate for applicant
Shri Y.P. Kaslikar, Advocate for non-applicant

CORAM : PRAVIN S. PATIL, J.

DATE : 02.02.2026

1. By this application, the applicant is challenging the order dated 13.08.2024 passed by learned Additional Sessions Judge, Amravati, in Criminal Revision Application No.136/2023, arising out of order dated 07.11.2022 passed by learned Judicial Magistrate First Class, Amravati, in Summary Criminal Case No. 4336/2019.

2. The brief facts of the case are that the applicant is the original complainant in Summary Criminal Case No.4336/2019 filed under Section 138 of the Negotiable Instruments Act, 1881. On 13.09.2022, after recording the statement of the accused under Section 313 of the Criminal Procedure Code, the proprietor namely Gokul Chavan entered into the witness box on 14.10.2022 and thereafter, the matter was posted for cross-examination on 07.11.2022.

3. On 07.11.2022, the accused/non-applicant filed an application under Section 65 read with Section 63 of the Indian Evidence Act, 1872 for grant of permission to lead secondary evidence relating to the partnership deed dated 28.03.2018 and notice dated 05.08.2019, on the ground that there is a partnership deed executed by complainant, accused and brother of accused. Original copy of said deed is with complainant. In the evidence, complainant denied the said deed. As such, he being in possession and produced the xerox copy on record, the same needs to be proved by way of secondary evidence.

4. The learned Trial Court by order dated 07.11.2022, allowed the application by holding that whether the complainant executed a partnership deed and received a notice sent by the accused, will be ascertained during the trial. The accused/non-applicant No.1 complied all the requirements for seeking permission for leading secondary evidence, the permission was granted and non-applicant No.2 was permitted to lead secondary evidence in respect of the partnership deed dated 28.03.2018 and notice dated 05.08.2019.

5. The said order was the subject matter of Revision No.136/2023, before the Sessions Court. The learned Sessions Judge by impugned judgment and order specifically recorded the finding that learned Trial Court has only granted permission to lead secondary evidence in

respect of the partnership deed and notice. Therefore, there is every opportunity to the applicant/complainant to cross-examine the witness, who being examined for the purpose of leading secondary evidence. So also, there would not be any prejudice to the complainant. The complainant while cross-examined the accused will be at liberty to verify the authenticity of the documents, which he is supposed to place on record by way of secondary evidence.

6. The non-applicant No.2 has relied upon the judgment of this Court in case of ***Anil Bilasaheb Murde vs. Adinath Trimbak Bodkhe reported in 2007 (1) Mh.L.J. (Cri.) 271***, wherein this Court has recorded its finding in para 10 as under:

“10. In the present case, the application has been thrown out of the court, at the threshold. Whether the secondary evidence which the applicant seeks to lead is to be accepted or not, is a stage yet to arrive. The limited question before the trial court was whether to permit the applicant to lead the secondary evidence or not.

In the unreported judgment of this Court delivered in Civil Revision Application No. 500 of 1991 (supra), in almost similar facts, this Court has observed thus:

"There is no dispute that the necessary notice under the provisions of Order 12 Rule 8 of Civil Procedure Code is already given to the defendants and in pursuance of the said notice, the original kararnama is not produced. Prior proceedings

between the parties definitely makes out a reference to the transaction which is either named as Isar Pavti or a kararnama and the contention of the petitioners that it was in the nature of a security for loan also finds reference in the earlier proceedings. On the facts and material on record, there is satisfaction of the provisions of section 65(a) of the Evidence Act and in the context, it will have to be stated that the learned Judge was in error in rejecting the application for permission to lead secondary evidence."

In my view, the observations of this Court in the aforesaid case would support the case of the applicant. The applicant has led the foundation in his Police complaint, so also, complaint under section 138 of the Negotiable Instruments Act, that the cheque is stolen by the present respondent/accused. Whether that is a matter of fact or not, would be decided only after the applicant is permitted to lead secondary evidence. In that view of the matter, I find that the impugned order is unsustainable in law and is liable to be quashed and set aside."

7. In light of judgment of this Court and perusal of record, it is clear that due to refusal of original partnership deed, the present non-applicant by following due procedure, moved the application for grant of permission to lead secondary evidence. Hence, learned Magistrate rightly allowed the application. So also, the Sessions Court, while

deciding the revision, has considered all the grounds raised by applicant and by recording cogent reasons, dismissed the revision.

8. Therefore, in my opinion, it is not a fit case of any interference by this Court. Accordingly, in my considered opinion, there are no merit in the present application, hence same stands dismissed.

9. No order as to the costs.

(PRAVIN S. PATIL J.)

R.S. Sahare