

MHAH160013442017



ORDER BELOW EXH. 48

The present complaint has been filed by complainant against accused alleging that the accused have committed offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as “NI Act”.) The present application has been moved by complainant submitting that, the alleged disputed cheque in the present matter is belonging to Aai Tuljabhavani Transport Company. Therefore, in this regard the record of the said firm is necessary to brought on record. Hence, it has been prayed that, the documents in respect of account opening of the said firm, the information regarding account operational rights of the said firm and sample signature of the said account holder needs to file on record. Therefore, it has been prayed that the Manager Bank of Baroda, Ahmednagar Main Branch may kindly be summoned to bring the said documents in duplicate.

2. *Per contra*, the learned advocate for complainant strongly resisted to the present application and submitted his say on the application overleaf. He submitted that, the present application is false and misconceived in nature. The present complainant want to bring the evidence in the present case by use of court machinery which is not permitted as per law. The present application is not tenable by law. Therefore, he prayed that the application may kindly be rejected.

3. Perused the record of the case and the application moved by complainant. It is seen that, the present complaint is filed by the complainant against the accused alleging that the accused has committed offence under Section 138 of the NI Act. The present application is filed as per the procedure established in Section 91 of the Code of the Criminal Procedure (for short Cr.P.C.) which is as under.

Section 91 of the Cr.P.C. says that, Summons to produce document or other thing. Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same. In short, the provision gives the powers to a court or a police officer in charge of a police station to ask for production of any document for the purpose of investigation.

4. No doubt, the complete procedure of Code of Criminal Procedure is based upon the principle of justice and fairness. One of the fundamental principles of legal jurisprudence and natural law is that any person who is accused of any offence should be given an

equal chance to be heard and to defend himself in the Court of justice. In this regard I have perused the record of the case in hand, on perusal of the same it is seen the accused in the present case are flawn away from justice and NBW has been issued against them, now, by moving the present application the complainant want to bring the some facts of the the firm of the accused name and styled as “Aai Tuljabhavani Transport H and T Government Contractor and Fleet” on record. For the same, the complainant want to bring the some documents which are kept in Bank of Baroda, Ahmednagar. Considering all these fact, I found that the application of the complainant deserves to be allowed. No harm is going to the accused if the said application is allowed rather it is necessary for the proper decision of the case. Hence, following order has been made :-

ORDER

1. The application (Exh. 48) is hereby allowed.
2. Issue summons to the Manager, Bank of Baroda, Branch Ahmednagar Main, to appear before this Court along with the necessary documents mentioned in the application (Exh. 48.)
3. The Branch Manager, Bank of Baroda, Branch Ahmednagar Main has liberty to depute his any subordinate who has knowledge abut the same in this regard.

Place :- Akole
Date :- 25/11/2022

(S.A. Parwatkar)
Judicial Magistrate F.C. Akole.