

Sheetal Vs. Jayprakash

IN THE COURT OF METROPOLITAN MAGISTRATE
20TH COURT, MAZGAON, MUMBAI

C.C. No. 2859/SC/2022

ORDER BELOW EXH. 29

The complainant has presented this application under section 294 of the Code of Criminal Procedure (Code) with a prayer directing the accused to admit or deny the documents which are placed on record along-with the complaint and during evidence.

2 The accused has opposed the prayer. It is contended on behalf of the accused that :- cross-examination of the complainant has already been concluded. The Statement Under Section 313 of the Code has also been recorded. Where-after, the accused has examined his witness Pravin Gandhi on 29.11.2023. Hence, this application is liable to be rejected.

3 Learned advocate representing the accused has submitted that necessary order regarding exhibition of the documents has been passed on 08.09.2022 without providing an opportunity to the accused to file his say with regard to said documents. He has submitted that necessary stages have already been lapsed and now at this stage this application is not sustainable.

4 The complainant has filed an application Exh. 12 invoking section 263 of the Code with reference to section 145 of the Negotiable Instruments Act (Act). Said application has been ordered after hearing



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the complainant, the accused. Whereby, the accused has been placed at liberty to explain the circumstances appearing in the evidence against him vide section 313 (a) of the Code. Accordingly, the statement under section 313 of the Code has been recorded below Exh.14. Wherein, attention of the accused has been drawn towards the version of the complainant and the documentary evidence on record such as the cheque, memo, demand notice, postal receipt, track report. Thereafter, the accused has moved an application Exh.15 seeking permission to cross examine the complainant. That has been allowed on 21.01.2023 and the complainant has been recalled for cross-examination as per section 145 of the Negotiable Instruments Act read with section 263, 311 of the Code.

5 The order has been passed below Exh. 6 to the effect that, "C.C. to verify and exhibit it in view of examination in chief". However, it appears that said documents which are placed along-with Exh. 6 have not been marked as exhibits as per said order. As noted earlier, the statement under section 313 of the Code has been recorded, whereafter, the complainant has been cross examined in view of the application moved on behalf of the accused. Meanwhile, the documents could not be marked as exhibits despite the order passed on Exh. 6. The complainant has deposed vide Exh. 5 under section 145 of the Negotiable Instruments Act. Wherein, she has referred to the documents i.e. the cheque, memo, demand notice, postal receipt, reply, rejoinder. The documents have already been placed on record along-with said

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examination in chief on the same date. The plea Exh. 8 has been recorded on 13.10.2022. The accused has received the copies of the complaint and the documents as per the endorsement thereon on 13.10.2022 itself. Till said date no objections have been offered with regard to the documents which have been placed on record.

6 Any how, now the complainant has tendered present application calling upon the accused to admit or deny said documents. The accused has opted not to offer comments with reference to admission or denial on said documents in this say filed today. Hence, considering the examination in chief of the complainant below Exh. 5 with reference to section 145 of the Act, following order is passed.

ORDER

1] The cheque Exh.27 has already been marked as exhibit in the version of Pravin DW1. Hence, noted.

2] The bank return memos dated 28.06.2022, 30.06.2022, the demand notice dated 06.07.2022, the postal receipt dated 08.07.2022, the reply dated 08.08.2022, the rejoinder dated 17.08.2022 along-with postal receipt are hereby marked as exhibits.

3] C.C. to verify as above and exhibit the documents.

4] The accused is at liberty to cross examine the complainant with reference to afore-stated exhibited documents vide section 311 of the Code of Criminal Procedure.



(V.B. Gulve-Patil)

Date : 04.01.2024

Metropolitan Magistrate,
20th Court, Mazgaon, Mumbai.

