

**Assured Vs. Keshavlal**  
**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS**  
**20TH COURT, MAZGAON, MUMBAI**

**C.C. No. 42/SS/2016**

**ORDER BELOW EXH. 134**

The accused has prayed to recall the complainant who is examined below Exh.41.

2 It is stated that :- during cross-examination, the complainant has answered that he would check the records and accordingly able to answer. Hence, there is an ambiguity which is to be clarified by further explanation, for which, his recall is necessary under section 311 of the Code of Criminal Procedure for effective adjudication of the cause.

3 The complainant has opposed the claim with contentions that :- the accused has availed number of opportunities to cross examine the complainant. Now, the statement under section 313 of the Code has been recorded. Nishant DW1 has deposed and subjected to cross examination, as well. The case is now listed for final arguments and at this belated stage present application is moved with an intention to protract the trial.

The points for determination alongwith my findings are as under...

| <b>Sr. No.</b> | <b>Points</b>                                                                                                     | <b>Findings</b> |
|----------------|-------------------------------------------------------------------------------------------------------------------|-----------------|
| 1              | Is the proposed evidence of the complainant's witness, as alleged is essential to the just decision of the case ? | No              |
| 2              | Is there any inherent lacuna being cured by way of the proposed evidence ?                                        | Yes             |



...2...

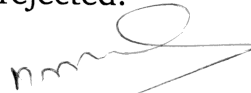
**REASONS**

**AS TO POINT NOS. 1 AND 2 :-**

4            Apparently, the complainant has been cross examined at length covering essential aspects of the dispute. He has not been called upon by the accused to have perusal of his records and to revert on a specific point by a specific scheduled date. He has not been called upon to produce the documents with specific details such as nature and relevancy of said documents either. Girish Gangadhar Bogulwar CW2 has also been subjected to examination. Nishant DW1 has got an opportunity to explain the circumstances appearing against him including his version on oath. It is pertinent to mention that Nishant DW1 has claimed an execution of power of attorney in favour of his father i.e. accused no.4. The record discloses that accused no.4 has been absconded. Number of warrants have been issued to secure his presence. Hence, it would be unjust to again recall the complainant at this stage. That apart, now at this stage, it would amount to filling up lacuna. Point no.1 is therefore answered in the negative and following order is passed.

**ORDER**

The application stands rejected.



(V.B. Gulve-Patil)

Judicial Magistrate First Class  
20<sup>th</sup> Court, Mazgaon, Mumbai.

Date : 06.12.2025