MHNS130012852018

S.C.C./678/2018

Kailas Rambhavu Pagar
Vs.
Mayur Sham Kasar

COMMON ORDER BELOW EXH.46 AND 49 IN SUMMARY CRIMINAL CASE NO.678 of 2018

Contention of the Complainant -

01] The Complainant has moved application (Exh.46) under Section 313 of the Cr.P.C. for calling Bank Officer as witness for proving fact of dishonour of cheque and application (Exh.49) for production of documents and admitting it in evidence.

02] In application (Exh.46), the complainant has contended that during the argument a defence was raised that return memo in this case does not bear seal and signature of the Bank. However, the said memos are accompanied by letter of the Bank. Therefore, those mamo were admitted in evidence and exhibited. The defence has raised ground that for want of signature and seal of the Bank, presumption under Section 146 of the N.I.Act is not applicable. Therefore, it is necessary to call Bank Officer for proving fact of dishonour cheque. The memos have been provided by the Bank. The complainant had no role in it. The complainant shall not be suffer for defect made by the Bank Officer. The evidence of Bank Officer is necessary in the interest of justice. No prejudice will be caused to the accused if witness is called. The accused will get opportunity of cross-examination of the said witness.

SAY -

03] The accused filed say (Exh.48) and resisted the application (Exh.46) on the ground that Section 313 of the Cr.P.C.

does not prescribe any procedure of calling witness. The complainant had knowledge at the time of filing complaint that memos do not bear signature and seal. The complainant has concluded his evidence and argument. The accused has also concluded his argument. The case was posted for Judgment. Thereafter, this application came to be filed. The said application is not maintainable at this stage. The accused has opened his defence. The complainant has no right to rebut defence of the accused. The complainant cannot be allowed to fill-up lacuna and defect. This application is filed in order to prolong the trial. Hence, this application may be rejected.

04] The Complainant in application (Exh.49) has contended that the complainant's Bank has supplied memos having seal and signature of the Bank. Therefore, those documents may be taken on record and exhibited.

05] The accused filed say (Exh.54) and resisted the application (Exh.49) on the ground that this application is not maintainable at the stage of Judgment. The complainant was not having memos with seal and signature of the Bank at the time of his examination-in-chief. However, he has stated in his chief that it bears seal and signature of the Bank. Therefore, it appears from letter given to the Bank that memos sought to be produced are secondary evidence. Primary evidence (Exh.24 to 26) are already on record. Therefore, new memos cannot be admitted in evidence.

06] It is further contended that memos sought to be produced are supplied on the basis of application dated 07/10/2025.

On the said date, new cause of action arose. Therefore, documents sought to be produced are not within limitation. This Court has taken cognizance and issue process on the basis of different document. Now, it is not permissible to file new documents at the stage of Judgment. The complainant cannot be permitted to fill-up lacuna by producing document at belated stage. Along with this application will amount to opening *denovo* trial. Therefore, this application may be rejected.

ARGUMENTS -

07] The learned advocate for the complainant argued that memos filed at the time of filing of complaint were accompanied by letter of the Bank. The said letters bear seal and signature of the Bank. Therefore, filing return memos with seal and signature of the Bank, will not amount to filling-up lacuna.

08] It was further argued that the Court has power to call any witness or document at any stage for the just decision of the case. No prejudice will be caused to the accused if documents are produced or witness is called for proving fact of dishonour of cheque. Reliance was placed upon the Judgment of ***Sonam Vs. Thomas Paul,***[1] ***,*** to urge that memos accompanied with letter of the Bank is sufficient to prove fact of dishonour of cheque.

09] On the other hand, learned advocate for the accused argued that memo filed along with complaint do not bear seal and signature of the Bank. The complainant was well aware with it.

1. 2002 (4)All MR (Journal) 21.

Filing memo with such seal and signature amount to filling-up lacuna. It will cause prejudice to the defence.

10] Reliance was placed upon the Judgment of ***Naina Rajan Guhagharkar Vs. State of Maharashtra,***[2] to urge that -

> *provision of Section 311 of the Cr.P.C cannot be used to fill-up the lacuna in prosecution evidence.*

11] Reliance was placed upon the Judgment of ***Neha Begum Vs. State of Assam (Special Leave to Appeal),***[3] to urge that -

> *calling and re-examination of witness cannot be permitted to filling-up the lacuna.*

12] Reliance was placed upon the Judgment of ***Smt.Vandana Akhilesh Pande Vs. Abhilasha Anil Pande,***[4] to urge that -

> *memo return of cheque without official mark of the Bank does not attract presumption under Section 146 of the N.I.Act for want of such official mark, cognizance of the offence under Section 142 of the N.I.Act could not have been taken by the Court.*

DISCUSSION -

13] Return memos (Exh.24 to 26) were filed along with list (Exh.12). It contain statement that cheques (Exh.21 to 23) were returned on 25/09/2018. Those memos do not bear date of issuance of the said memos. It contain statement that those cheques were returned for the reasons ***"Funds insufficient"***.

2. Criminal Writ Petition No.1658 of 2021.

3.Criminal No.3910 of 2024.

4.Cri.Appeal No.360 of 2017.

14] Letters (Exh.27 to 29) contain statement that inclosed cheques (1+2=3) are returned for the reason given in the memos. Those letters are dated 26/09/2018. Therefore, memos (Exh.24 to 26) has to be read together with letters (Exh.27 to 29). Letters (Exh.27 to 29) bear seal and signature of the Bank authority. On combine reading of those documents, it is clear that statement of return of cheques are on record with seal and signature of Bank authorities.

15] The witness sought to be recalled and document sough to be produced are for the purpose of proving fact of dishonour of cheques. The fact in issue is *"whether cheques were dishonoured or not ?"*. Fact in issue is not *"whether memo bear seal and signature of the Bank ?"*.

16] Burden of proving dishonour of cheques is on the complainant. The memos sought to be produced (Exh.50/2 to 50/4) contains same statements as in memos (Exh.24 to 26). However, memos (Exh.50/2 to 50/4) bear seal and signature of the Bank.

17] As noted above, statements containing fact of dishonour of cheques (Exh.21 to 23) with seal and signature of the Bank are already on record vide memos and letters (Exh.24 to 29).

18] There is no dispute about legal principle that provisions of Section 311 of the Cr.P.C. cannot be invoked to fill up lacuna in the prosecution. The term "lacuna" has to be understood in the sense of "inherent lacuna". The statement of Bank with official seal and signature in respect of dishonour of cheque is already on record. Had memos (Exh.24 to 26) not been filed earlier, it could have said that the complainant wants to fill up the lacuna.

19] **Section 146 of the N.I.Act**, provides that -

> *on production of Bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.*

20] The purpose of putting official mark on memo is to make memo admissible in evidence without calling Bank officer to prove the same. **The Banker Book Evidence Act, 1891** also contains the similar provision for admissibility of some documents. **Section 4 of the Banker Book Evidence Act, 1891,** provides that -

> a certified copy of any entry in a banker's book shall in all legal proceedings be received as *prima faci*e evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

21] The purpose of all these provisions is not to call Bank officials as witness in dispute between the third parties. As noted above, fact in issue is not whether memo contains seal and signature of the Bank. The document sought to be produced is only to make statements contained therein admissible without requiring further proof.

22] I do not find merit in argument of the accused that the production of document is to make secondary evidence admissible. The documents sought to be produced are primary evidence. Considering the entire record of the case, it is clear that the complainant wants to make a statement admissible in evidence, which is already on record. Allowing to prove a fact to make already available evidence admissible cannot be said to be filling up lacuna.

23] **Section 165 of the Indian Evidence Act,1872**, enables the Judge in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing.

24] In case of ***Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal,***[5] it has been held that -

> *under Section 311 of the Cr.P.C, it is permissible for the Court even to order production of a document before it if it is essential for the just decision of the case.*

25] Therefore, production of document or calling witness can be allowed at any stage of the case, if it is essential for the just decision of the case. As noted above, the documents sought to be produced are not for the purpose of filling lacuna. In view of ***Section 146 of the N.I.Act****, the production of document will suffice the purpose of admitting contents therein in evidence without requiring further proof.* Therefore, it will not be necessary to call Bank witness

5.AIR 2020 SUPREME COURT 4908.

for the purpose of proving those documents. Hence, I pass following order -

O R D E R

(i)	Application (Exh.46) is hereby rejected.
(ii)	Application (Exh.49) is hereby allowed.
(iii)	Production of Memos (Exh.50/2 to 50/4) is allowed.
(iv)	Memos (Exh.50/2 to 50/4) are admitted in evidence and they be exhibited.
(v)	No order as to costs.

Sd/-

[**A. J. Patil**]
Judicial Magistrate (F.C.)
Pimpalgaon (B).

Date : 09/02/2026