

Order below Exh. 41

This is an application filed on behalf of complainants seeking permission to lead additional oral evidence of C.W. No. 1 in respect of extract of alleged transaction took place in between himself and accused. According to them, the cross-examination of C.W.No. 1 is over, they have filed extract of transaction in between themselves and accused, alleged extract is filed after cross-examination of C.W.No. 1, alleged extract is required to be proved. Hence, they sought aforesaid permission.

2] Accused has filed say at Exh. 43 and strongly resisted application. According to him, the permission for additional oral evidence cannot be granted to fill up the lacuna. The complainant has not given explanation as to why he has not filed said document during recording of evidence. This is abuse process of law. Hence, he has prayed for rejection of application.

3] Heard learned counsels on behalf of both parties.

4] Perused the record. Complainants have filed present proceeding against accused for the offence punishable under Section 138 of the Negotiable Instruments Act. It is their case that, accused has purchased beer from complainants in the year 2007-08, separate extract of said transaction is maintained by

complainants, the amount of Rs. 4,51,039 was due from the accused, towards the payment of due amount accused has issued the disputed cheque for Rs. 1,00,000/-, upon presentation of said cheque, it was dishonoured.

5] Admittedly, cross-examination of C.W. No. 1 is over, however, evidence of complainants is not yet closed. I think for the determination of dispute on merit, it is necessary to grant permission to lead oral evidence regarding extract of alleged transaction. Accused will be entitled for cross-examination, hence, he will not be prejudiced if such permission is granted. The very purpose to grant such permission is to decide the dispute fairly on merit. In such circumstances, I do not think that, it will be filling up lacuna.

6] Learned advocate on behalf of accused has relied on **Umesh Nanaji Shinde Vs. Moreshwar Namdeo Raut, 2007 CJ (Bom) 1594**. In that case the evidence of complainant was absolutely over and matter was placed for final argument and before argument could be advanced, the complainant has filed an application for examination of certain witnesses. Said application was filed after completion of evidence of complainant and after recording statement of accused under Section 313 of the Code of Criminal Procedure. Furthermore, the accused has cited **Gurmeet Vs. Renusingh & Anr. 2009(1) Crimes 422 (Bom)**, wherein the petitioner complainant sought the leave to file new

documents and to prove them by calling witness after her evidence has been completed and closed.

7] In case in hand, the evidence of complainant is not yet closed. The stage of this proceeding is further evidence of complainants. The alleged document is already filed on record. Thus, the facts in cited case laws are not identical with the facts of case in hand. Hence, with utmost respect, I found the aforesaid case laws have no bearing with the case in hand.

8] Considering aforesaid reasons, I found application deserves to be allowed. Resultantly, I proceed to pass following order :

ORDER

- 1] Application is hereby allowed.
- 2] Complainants are permitted to lead further oral evidence in respect of extract of alleged transaction.
- 3] No order as to costs.

Date - 05/02/2020

Judicial Magistrate F.C.
Koregaon.