IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No.514 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE BANKIM N. MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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PATEL ASHWINKUMAR KACHARABHAI - Petitioner
Versus
THE STATE OF GUJARAT & ANR. - Respondents

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Appearance :
MR DM AHUJA for Petitioner.
MR KC SHAH, APP for Respondent No.1.
MR SA BAQUI for Respondent No.2.

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CORAM : HONOURABLE MR. JUSTICE BANKIM N. MEHTA

Date : 30/04/2008

ORAL JUDGMENT

1. The petitioner-complainant has, by way of

filing this application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 [“the Code” for short], challenged the common judgment and order dated 27.04.2006 passed by the learned Additional Sessions Judge, Court No.13, Ahmedabad, in Criminal Revision Application Nos.291 of 2005 to 295 of 2005 setting aside order dated 17.10.2005 passed by the learned Metropolitan Magistrate, Court No.2, Ahmedabad below application, Exhibit 9, in Criminal Case No.584 of 2004 whereby the learned Metropolitan Magistrate rejected the application filed by the respondent-accused for production of certain documents under Section 91 of the Code.

2. The respondent-accused is being prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. During the course of recording of evidence of the complainant, the respondent-accused filed an application Exhibit-9 under the provisions of Section 91 of the Code for production of certain documents on the ground that the documents mentioned in the application are in the custody of the witness/complainant and they are required to be produced for cross-examination of the witness.

2.1 After hearing the learned advocates for the parties, the learned Metropolitan Magistrate, Ahmedabad rejected the said application by order dated 17.10.2005.

2.2 Therefore, the respondent-accused filed Criminal Revision Application in the Court of learned City Sessions Judge, Ahmedabad.

2.3 After hearing the learned advocates for the parties, the learned Additional City Sessions Judge, by his common judgment and order, allowed the Revision Application of the respondent-accused and set aside the order passed by the learned Metropolitan Magistrate as well as directed the petitioner-complainant to produce all the documents mentioned in the application filed in the trial Court.

2.4 Being aggrieved by the said aforesaid decision of the learned Additional Sessions Judge, Ahmedabad, the petitioner-complaint has approached this Court by way of above numbered Criminal Revision Application.

3. This Court has heard Mr.Ahuja, learned advocate for the petitioner and Mr.K.C.Shah, learned Additional Public Prosecutor for the respondent-State, at length and

in great detail. The arguments of Mr.Ahuja, learned advocate for the petitioner, were heard on 24.04.2008 and as Mr.Baqui, learned advocate representing the respondent-accused, was not present in the interest of justice, the matter was adjourned to 25.04.2008. On 25.04.2008, Mr.Baqui, learned advocate, filed sick-note and, therefore, the matter was adjourned to 28.04.2008, but the matter could not be taken up for hearing on that day and ultimately, the matter came to be adjourned to today. Today also, when the matter was called out, Mr.Baqui, learned advocate, is absent and, therefore, no oral submissions are made on behalf of the respondent-accused.

4. It is submitted by Mr.Ahuja, learned advocate for the petitioner-complainant, that several complainants are filed by different complainants against the respondent-accused for the offence under Section 138 of the N.I. Act and as the respondent-accused is not in a position to repay the amount, he with a view to delay the proceedings had given the application for production of the documents mentioned in the application. He has also submitted that the accused has no right to seek production of documents before he enters into defence and in the present case, the matter is at the stage of

recording of evidence on behalf of the prosecution. Therefore, the accused is not entitled to have production of such documents at this stage. He has also submitted that the accused could get the documents produced at the appropriate stage of the proceedings and, therefore, the learned Metropolitan Magistrate was justified in passing the impugned order, but the lower revisional Court committed error in passing the impugned judgment and order. He has relied upon decisions reported in the case of *Bhikubhai Anakbhai Bayal vs. State of Gujarat, 2007 (2) GLR 1380* and in the case of *State of Orissa vs. Debendra Nath Padhi, AIR 2005 SC 359.*

5. Mr.Shah, learned Additional Public Prosecutor, has supported the submissions made by the learned advocate for the petitioner and submitted that lower revisional Court has committed error in passing the impugned judgment and order. He has submitted that the accused has no right to claim production of documents at the stage of recording of prosecution evidence and, therefore, the impugned judgment and order is required to be quashed and set aside.

6. It appears from the certified copy of the application Exhibit-9 annexed with the compilation that

the documents mentioned in paragraphs 1 to 5 are sought to be produced.

7. It appears that the learned Additional Sessions Judge relied upon the decision of *Maheshchandra K. Trivedi vs. State of Gujarat, 1999 (2) G.L.H. 1029*, and set aside the order of the trial Court. In the said decision, this Court took the view that an accused is entitled for production of documents from the prosecution side at any stage before the accused is compelled to enter into defence and can legitimately pray for production of documents. In the said decision, the Court held that the accused is entitled to invoke the benefits given under Section 91 of the Code at any stage, may it be at the stage of investigation or any other proceedings under the Code.

8. In the decision of *State of Orissa vs. Debendra Nath Padhi (supra)*, the Hon'ble Supreme Court in paragraph 25 observed that when the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. The Supreme Court further observed

that Section 91 of the Code does not confer any right on the accused to produce documents in his possession to prove his defence before the stage of defence is reached.

9. Similarly, in the case of *Bhikubhai Anakbhai Bayal vs. State of Gujarat (supra),* this Court held that the accused is neither entitled to seek production nor entitled to produce the documents in his possession before the stage of defence is reached. In the said decision, this Court relied upon the decision in the case of *State of Orissa (supra)*. In view of this proposition of law, it is clear that the accused has no right for production of documents till he enters his defence. The language of Section 91 of the Code indicates that whenever any court considers that production of any document is necessary or desirable for the purpose of any investigation or inquiry or trial or other proceedings under the Code, such court may issue summons. Therefore, in order to issue summons for production of documents, the Court is required to see that the document is necessary and desirable for the purpose of trial. Therefore, accused could move the Court for production of documents at the appropriate stage and the Court after considering necessity and desirability could issue summons for production of documents. In the instant case,

the respondent-accused sought production of documents for cross examination of the witness. It appears that the respondent-accused did not give reply to the notice. Hence, the ground given for production is not convincing. Therefore, the learned Metropolitan Magistrate was justified in rejecting the application, but lower revisional Court committed error in passing the impugned order.

10. In view of the above, as the recording of evidence for the complainant is in progress, the respondent-accused could not claim production of the documents. This Court has not gone into the merits of the application as to whether the documents are necessary or desirable for the purpose of trial as it is likely to cause prejudice to either side, but at this stage, the respondent is not entitled for the relief claimed. Therefore, the impugned order is required to be set aside.

11. In view of the above, the learned Metropolitan Magistrate was justified in rejecting the application filed by the respondent-accused for production of documents, but the learned Additional Sessions Judge has committed error in setting aside order of the learned

Metropolitan Magistrate and directing the petitioner-complainant to produce documents. The impugned judgment has caused grave injustice to the petitioner-complainant. Therefore, the impugned judgment is required to be quashed and set aside and the order passed by the learned Metropolitan Magistrate is required to be restored.

In the result, this Revision Application succeeds. The impugned judgment and order dated 27.04.2006 passed by the learned Additional Sessions Judge, Court No.13, Ahmedabad, in Criminal Revision Application Nos.291 of 2005 to 295 of 2005 is quashed and set aside and the order dated 17.10.2005 passed by the learned Metropolitan Magistrate, Court No.2, Ahmedabad, below application Exhibit-9 in Criminal Case No.584 of 2004 is hereby restored. Rule is made absolute accordingly. The trial Court shall proceed with the case in accordance with law.

[Bankim N. Mehta, J.]

Rajendra