

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL WRIT PETITION NO.1370 of 2014

M/s.Credential Finance Limited .. Petitioner

*Versus*

M/s.Aminex Chemicals Ltd &amp; ors .. Respondents

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Mr.Dharam Sharma i/b Dharam &amp; Co.for the petitioner.

Mr.Manish Bohra i/b A.S.Khan & Associates for respondent nos.1,  
2 and 3.

Mr.Deepak Thakre, APP for the Respondent State.

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**CORAM : ABHAY M. THIPSAY, J.****DATED : 11<sup>th</sup> NOVEMBER 2014.**

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**P.C. :**

1 Heard Dharam Sharma, learned counsel for the petitioner. Heard Mr.Manish Bohra, learned counsel for the respondent nos.1, 2, and 3. Heard Mr.Deepak Thakre, learned APP for the State.

2 The petitioner Company is the complainant in a case pending before the Metropolitan Magistrate, 14<sup>th</sup> Court, Girgaum. The respondent nos.1, 2 and 3 are the accused in the said case. For the sake of convenience and clarity, the petitioner shall, hereinafter be referred to as 'the complainant' and the respondent nos.1, 2, and 3 as 'the accused'. The case relates to an offence punishable under section 138 of the Negotiable Instruments Act.

In the course of trial, some documents were tendered in evidence by the complainant. However, those documents were not exhibited. After the case had advanced upto the stage of section 313 of the Code of Criminal Procedure, the complainant pointed out to the Court that the said documents had been duly proved, but that inadvertently, they were not marked as exhibits. This contention was accepted by the learned Magistrate, and the documents then came to be exhibited. The accused persons thereafter, made an application for recalling the relevant witness – i.e. PW no.1 – for cross-examination on the ground that they had had no opportunity of cross-examining the said witness with respect to the documents that subsequently came to be exhibited. This contention was accepted by the Magistrate, who permitted the recall of the complainant's said witness for the purpose of cross-examination on payment of costs of Rs.2,000/-. Aggrieved by the said order, the complainant approached the Court of Sessions by filing an application for revision, but the learned Addl. Sessions Judge who heard the Revision, came to the conclusion that the order passed by the Magistrate, was proper and legal. As such, he dismissed the Revision Application. It is under these circumstances that the complainant has approached this Court by filing the present petition, invoking the constitutional jurisdiction of this Court, and praying that the orders passed by the learned Magistrate, as also the order passed by the Addl. Sessions Judge in revision, be set aside.

3           I have gone through the order passed by the Magistrate as well as the order passed by the Court of Sessions in revision.

4 I do not find anything improper or illegal in the order passed by the learned Magistrate. The learned Magistrate has observed that since the documents were earlier not exhibited, an opportunity was required to be given to the accused to cross-examine the witness with respect to the contents of those documents. The Magistrate has made it clear in his order that the witness would be cross-examined only with respect to the documents which were subsequently marked as exhibits, and that the cross-examiner would not be allowed to touch any other facts. Even the learned Addl. Sessions Judge was of the same view.

5 The learned counsel for the petitioner submitted that the witness has already been extensively cross-examined with respect to those documents. According to him, therefore, it was not necessary to grant a further opportunity to the accused persons. He emphasized that the case is pending before the Magistrate since the year 1997.

6 It is not necessary to go into the question as to whether the accused persons had, had an opportunity to cross-examine the witness with respect to the contents of the documents. It is undisputed that when the witness was cross-examined, the documents were not marked and exhibited. It is quite possible that after they were formally exhibited, the accused would feel the necessity of cross-examining the witness further with respect to the contents of the documents in question. In any

case, it was within the discretion of the Magistrate to permit recalling of the witness in such circumstances. It is impossible to hold that the discretion that was available to the learned Magistrate in that regard, has been abused by him. Consequently, the learned Addl.Sessions Judge was right in dismissing the revision application. Indeed, there was no case for exercising the revisional jurisdiction which is meant for correcting a manifest error of law, resulting in miscarriage of justice.

7            Since I find that there is no illegality or impropriety either in the order passed by the Magistrate, or by the Addl.Sessions Judge in revision, there is no question of interfering with the impugned orders by exercising the constitutional jurisdiction of this Court.

8            Petition is dismissed.

**(ABHAY M.THIPSAY, J)**