

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.2628 OF 2013
WITH
CRIMINAL WRIT PETITION NO.2629 OF 2013**

Mr. Vinod S/o. Amarchand Sharma ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. A.M. Saraogi for the Petitioner.

Mr. Satish Upadhyay i/b. Mr. M.V. Kini & Co. for
Respondent No.2.

Ms R.V. Newton, APP for Respondent No.1 – State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 1st OCTOBER, 2015.

P. C. :

Rule. Rule made returnable forthwith. By consent of the parties matter taken up for final hearing.

2. By this petition the Petitioner has challenged the order dated 4th June, 2013 whereby the learned Metropolitan Magistrate, 28th Court at Esplanade, Mumbai, dismissed the application filed by the Petitioner for reopening the cross examination of P.W.-1.

3. The learned counsel Mr. Saraogi for the Petitioner has submitted that he was held up in another Court when the P.W.-1 Mr. Subhash Shankar Chavan was under cross examination and hence his junior sought to defer the further cross examination. This request was rejected and cross examination of P.W.-1 was closed. He has further submitted that immediately thereafter within 2/3 days he had filed an application for reopening the cross examination and that the learned Magistrate has dismissed the said application without there being any reason. He has therefore, submitted that the order is illegal and needs to be quashed and set aside.

4. Learned counsel for the Respondent No.2 brought to my notice the findings given by the learned Magistrate and has submitted that the Petitioner's Advocate had not sought any adjournment. He has further submitted that the Petitioner is only trying to delay the proceedings and on earlier occasion the Petitioner was saddled with cost, despite which the Petitioner has indulged in delaying and protracting the matter. He therefore, contends that the learned Magistrate was justified in dismissing the application for re-opening the cross-examination of P.W.-1.

5. I have perused the impugned order and I have also considered the submission of learned counsel for the respective parties. The record reveals that the affidavit-in-evidence of PW-1 was filed on 11.11.2009 and that the witness was cross-examined on 21.11.2009, 16.12.2009, 4.3.2011, 26.3.2013 and 2.4.2013. It is seen that the matter has been dragged for a considerable time. The contention of the learned counsel Mr. Saraogi that his junior had sought time and that the learned Magistrate had declined the request is also not borne from the record. The record do not reveal the advocate for the accused had filed any application for adjournment or had requested the Court to defer the cross-examination. Hence the learned Magistrate cannot be faulted for treating the cross-examination as closed.

6. At this stage, the learned counsel Mr. Saraogi submits that Petitioner may be given a final opportunity to cross-examine the witness. He further states that he will complete the cross-examination in one day. In the facts of the case, and considering the aforesaid statement, the interest of justice would be met by allowing the Petitioner to cross examine the writ petition.

7. Under the circumstances, the impugned order is set aside subject to payment of cost of Rs.10,000/- in each of the petitions. It is further made clear that the cross-examination of P.W.-1 would be completed in one hearing without any further adjournment. Both parties have agreed to appear before the Magistrate on **17.10.2015** at 11.00 a.m.

(ANUJA PRABHUDESSAI, J.)