

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 975 OF 2014

Shri. Abhijeet s/o Diliprao Deshmukh,
Age: 34 years, Occ: Business,
R/o. Dongargaon (Pul.), Tq. Kalamnuri,
Dist. Hingoli.

...Petitioner

versus

Anwarkhan s/o Habibkhan Pathan,
Age: 48 years, Occ: Business,
R/o. Kalamnuri, Tq. Kalamnuri,
Dist. Hingoli.

...Respondent

.....
Mr. M.M. Patil (Beedkar), Advocate for petitioner
.....

CORAM : N.W. SAMBRE, J.

DATE : 2nd APRIL, 2016

ORAL ORDER :

Heard Mr. Patil, learned Counsel for the petitioner.

2. The petitioner-accused, in trial for the offence punishable under Section 138 of the Negotiable Instruments Act, moved an application for recalling of the complainant for cross examination at the stage of recording of his statement under Section 313 of Code of Criminal Procedure. The said application came to be rejected by learned Magistrate by an order dated 19/08/2014. As such, the present writ petition.

3. Learned Counsel for the petitioner, while trying to make out the case for grant of prayer to recall the complainant for further cross examination, has invited attention of this Court to the evidence of respondent-complainant recorded in earlier point of time and then would submit that the documents at Page-32, 33 and 34 are relevant, which requires the cross examination of the complainant. He would submit that the petitioner is entitled for a fair opportunity of trial, as he has every right to further cross examination of the complainant.

4. With the assistance, I have perused the contents of the complaint and also read the entire evidence of the complainant. It is claimed by the petitioner-accused that by virtue of present application, for recalling the complainant for cross examination, the financial capacity of the complainant of advancing the amount to the accused is an issue, which is to be established. Perusal of the evidence depicts that the complainant was subjected to cross examination twice. On both these occasions, sufficient material is brought on record. In my opinion, from the cross examination of the complainant, the financial capacity of the complainant could be inferred. So far as the documents which are sought to be relied upon, in my opinion, the said documents can be read in evidence at the time of arguing the matter having regard to the nature of the same.

5. In this background, in my opinion, no illegality could be noticed in the matter of rejection of the prayer of the petitioner for recalling the complainant for further cross examination. As such, the writ petition fails and stands dismissed.

[N.W. SAMBRE, J.]