

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITON NO.4948 OF 2015

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Manmath Athalye for the Petitioners.

Smt. Anamika Malhotra, APP for the State.

Mr. S.P. Dighe for the Respondent.

CORAM : A.S.GADKARI, J.

DATE : 14th March, 2016

P.C.

Heard learned counsel for the respective parties.

2) The petitioner is the original accused in Summary Case No.2714/2013 filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 before the learned JMFC Satara, District Satara. The original complainant in due course of time filed her affidavit in lieu of examination in chief and the case was posted for cross examination of the complainant's witnesses. It is the contention of the petitioner accused that as his earlier Advocate was not conducting the said case satisfactorily, he changed his Advocate and new Advocate came to be appointed on 31.7.2015. The new Advocate thereafter took search of the proceedings and found that on 14.10.2014 the learned JMFC had already passed an order thereby foreclosing the petitioner from cross examining the complainant and/or her witnesses. The learned Advocate for the petitioner thereafter moved an application on 31.7.2015 itself for

setting aside the said order of “no cross”. The said application was allowed subject to payment of costs of Rs.500/-.On 31.7.2015, the said case was adjourned to 25.8.2015.

3) The matter was subsequently adjourned on two to three occasions. On 3.11.2015, the learned Advocate for the petitioner could not attend the court at scheduled time and therefore, the case was kept back at 3.00p.m. by the learned Magistrate with a view to enable the petitioner to cross examine the complainant. It appears from the record that even at 3.00p.m. the Advocate for the petitioner could not remain present and the learned Magistrate thereafter passed an order below Exhibit-17 dated 3.11.2015 thereby foreclosing the right of the petitioner to cross examine the complainant. In the said order, it was observed that the complainant was present in the court since 11.00 a.m. however, till 3.30p.m. neither the petitioner nor his Advocate attended the Court.

4) The petitioner thereafter moved an application below Exhibit-42 for recalling of the order passed below Exhibit-17. It is to be noted here that the learned Advocate for the respondent/original complainant filed his say on even date below Exhibit-42, wherein the facts pertaining to the said case and the delay caused at the hands of the petitioner were narrated. The learned Advocate for the respondent/original complainant with utmost fairness has stated in the said say that the said application may be allowed by imposing heavy costs on the accused. The learned Magistrate after hearing the parties on the said application passed the present impugned order below Exhibit-42 wherein it is observed that the petitioner is trying to protract the litigation and despite being given various

opportunities he deliberately did not cross examine the complainant and/or other witnesses.

5) The learned counsel appearing for the respondents on instructions submitted that his client still maintains the say which was filed by them below Exhibit-42 which is annexed at Page-25 to the present petition. In view of the same and in the interest of justice, I am inclined to set aside the order passed below Exhibit 42 dated 3.11.2015 subject to costs of Rs.3000/-to be paid by the petitioner to the Maharashtra State Legal Services Authority within a period of two weeks from today.

6) The payment of costs shall be the condition precedent for setting aside the order passed below Exhibit-42.

7) Petition is allowed in the aforesaid terms.

8) All the concerned to act on a copy of this order duly authenticated by the registry of this Court.

(A.S. GADKARI, J.)