

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2877 OF 2016
IN
CRIMINAL REVISION APPLICATION NO. 348 OF 2015**

Govind Gajanan Jalan	...Petitioner
Versus	
State of Maharashtra & Anr.	...Respondents

Mr. Girish R. Agarwal for the Petitioner

Mr. S. R. Agarkar, A.P.P for the Respondent No.1-State

Mr. Anand Salgaonkar with Ms. Anamika Mehendale for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
MONDAY, 3rd OCTOBER, 2016

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule made returnable forthwith, by consent. Respondents waive notice through their respective Counsel.
3. Petition is taken up for final disposal forthwith, by consent.

4. By this petition, the petitioner has impugned the order dated 31st July, 2015 passed by the learned Judicial Magistrate First Class, Pune below Exhibit 42D in STCC No. 27810 of 2013 as well as the judgment and order dated 2nd June, 2016 passed by the learned Additional Sessions Judge, Pune, in Criminal Revision Application Nos. 348 of 2015, by which the petitioner's revision came to be dismissed.

5. Learned Counsel for the petitioner submits that the petitioner be given one last opportunity of cross-examining the complainant i.e. respondent No. 2, in the interest of justice. He submits that as the Advocate for the petitioner had failed to remain present before the trial Court, the trial Court was pleased to pass the order of 'No Cross'. He submits that the petitioner, not being well versed with legal proceedings was unable to understand the legal implications of the orders passed against him. He submitted that the petitioner's advocate had stopped attending the case on behalf of the petitioner and hence, the petitioner appointed another lawyer only on 10th July, 2015. He submits that even thereafter, as the petitioner was not being properly represented, he was required to again change his

Advocate and appoint another Advocate. He submitted that the petitioner had not paid costs of Rs. 200/- towards adjournment in the trial Court as well as Rs. 1000/-, as he was unable to understand the legal implications of non-payment of the said costs. He submits that the petitioner is willing to deposit the said costs. He submits that a perusal of the Roznama will show certain facts which will have a bearing on the decision of this petition. He submits that in the interest of justice, the petitioner be permitted to cross-examine the respondent No. 2 subject to costs.

6. Learned Counsel for the respondent No. 2 vehemently opposed the petition. She submitted that the petitioner by his conduct, was precluded from making the aforesaid prayer seeking quashing and setting aside of the impugned orders dated 31st July, 2015 and 2nd June, 2016. She submitted that the petitioner had failed to even pay costs of Rs. 200/- awarded by the trial Court for an adjournment as well as costs of Rs. 1000/-. She submitted that the conduct of the petitioner disentitles him from any relief or any indulgence whatsoever. She submitted that the petitioner kept on changing his Advocates and as such he himself was responsible for the delay and for the impugned orders being passed against

him. She submitted that the trial has almost come to a fag end, inasmuch as, the statement of the petitioner (accused) is recorded under 313 and the advocates for the petitioner and respondent No. 2 have even presented their submissions before the learned Judge. She urged that under these circumstances, no interference whatsoever was warranted in the impugned orders.

7. Perused the papers. The respondent No. 2 has lodged complaints alleging an offence punishable under Section 138 of the Negotiable Instruments Act, as against the petitioner. Pursuant to the said complaints, the petitioner appeared alongwith his Advocate before the trial Court on 6th March, 2014. On 5th July, 2014, the respondent No. 2 filed his affidavit of examination-in-chief and the matter was adjourned to 18th July, 2014. On 18th July, 2014, the petitioner appeared alongwith his Advocate and the cases were adjourned for cross-examination of the respondent No. 2 to 5th August, 2014. Thereafter, on 5th August, 2014, the learned Judge adjourned the matter for cross-examination on 19th August, 2014. On 19th August, 2014, the petitioner was personally present before the trial Court and filed an application (Exhibit 23) and sought adjournment on the ground

that the Advocate's relative had expired and hence, the Advocate was unable to attend the proceedings. The application filed by the petitioner being Exhibit 23 was granted, subject to the condition that the petitioner deposits Rs. 200/- as cost. Payment of costs of Rs. 200/- was a condition precedent, pursuant to which, the matter was adjourned to 1st September, 2014. It appears that the petitioner had failed to deposit the said cost of Rs. 200/- awarded by the trial Court. The explanation offered by the petitioner was that he was not well versed with the legal proceedings and as he was facing financial difficulties, he failed to deposit the said costs in the trial Court. On 1st September, 2014, the Advocate who appeared for the petitioner failed to remain present and hence, the trial Court was pleased to pass the order of “No Cross” as against the petitioner (being Exhibit 19). According to the petitioner, his Advocate stopped attending the said matter on all dates subsequent thereto. On 26th February, 2015, the respondent No. 2 filed his purshis at Exhibit 38 and evidence was closed. On 6th April, 2015 the petitioners statement under Section 313 Cr.P.C was recorded at Exhibit 39. It appears that the petitioner was appearing personally on all the dates and was not represented by any Advocate. On 10th July, 2015, the petitioner filed another application, being Exhibit 40 before the trial Court

requesting for permission to change his Advocate as his earlier Advocate was not communicating with him and as he was unable to understand the procedure of the Court. The said application at Exhibit 40 was allowed by the trial Court. On 22nd July, 2015, the newly appointed advocate on behalf of the petitioner realized that there was an order of “No Cross” which was passed by the trial Court on 1st September, 2014 and realizing that the said order would adversely affect the petitioner's case, filed an application, being Exhibit 42D praying therein, for setting aside the said order of ‘no cross’ alongwith a prayer seeking permission to cross-examine the respondent No. 2. The said application was resisted by the respondent No. 2. On 31st July, 2015, the trial Court was pleased to reject the said application essentially on the ground that the petitioner was trying to deliberately delay the proceedings.

8. Being aggrieved by the said order dated 31st July, 2015 passed below STCC No. 27810 of 2013, the petitioner approached the Sessions Court by filing revision application before the said Court. The learned Sessions Judge vide order dated 2nd June, 2015 was pleased to reject the said application on the ground that it would result in delay and another

round of litigation. It was observed that the petitioner had practically admitted his liability under Section 313 Cr.P.C and as such no prejudice would be caused to the petitioner. Being aggrieved by the said orders, the petitioner has approached this Court.

9. A perusal of the Roznama shows that the petitioner was attending the court practically on every date, however, his first advocate had failed to remain present pursuant to which, he appointed another advocate. It appears that the petitioner was not properly represented by his advocate. However, at the same time, the conduct of the petitioner cannot be ignored. According to the learned Counsel, the petitioner should be given one opportunity to cross-examine. Learned Counsel submitted that the petitioner is also ready to pay costs of Rs. 200/- and Rs. 1000/- as imposed by the trial Court. Learned Counsel for the petitioner, on the instruction of the petitioner, who is present in Court, makes a statement that the petitioner does not intend to examine any defence witness and that the only request is to permit the petitioner to cross-examine the respondent No.2. It appears that the statement of the petitioner under Section 313 has already been recorded and the advocates have advanced their arguments.

The learned Counsel for the petitioner on the last date agreed to pay costs of Rs. 25,000/- to the respondent No. 2, as suggested by this Court.

10. The learned Counsel for the petitioner today has brought pay order of Rs. 25,000/- drawn in favour of the complainant i.e. respondent No. 2.

11. In the peculiar facts and circumstances of the case, only by way of indulgence and in the interest of justice and to ensure that the petitioner (original accused) gets a fair opportunity to defend himself, the impugned orders dated 31st July, 2015 of “No Cross”, passed by the learned Judicial Magistrate First Class, Pune below Exhibit 42D in STCC No. 27810 of 2013, confirmed by the Revisional Court vide order dated 2nd June, 2016 in Criminal Revision Application No. 348 of 2015, are quashed and set-aside and the petition is allowed, subject to petitioner paying costs of Rs. 25,000/- to the respondent No. 2. The said pay order drawn in the name of the respondent No. 2, has been handed over to the learned Counsel for the respondent No. 2, in Court today.

12. The petitioner to appear before the trial Court alongwith his Advocate on 15th October, 2016 for conducting the cross-examination of respondent No. 2. Learned Counsel for the respondent No. 2 states that the respondent No. 2 would also remain present on the said date to enable the petitioner to cross-examine him.

13. The trial Court shall permit the Advocate for the petitioner to cross-examine the respondent No. 2. Both the parties to remain present on the dates given by the trial Court, in the event, the case is adjourned for cross-examination of the respondent No. 2, on any other date or for want of time. The statement of the petitioner that he does not wish to examine any defence witness is accepted.

14. Petition allowed on the aforesaid terms. The case is expedited. The trial Court shall decide the case as expeditiously as possible and in any event, before 30th November, 2016.

15. After recording the cross-examination, the trial Court to re-hear the arguments and proceed to pass final orders. It is made clear that if the

trial Court is of the opinion that certain questions need to be put to the petitioner under Section 313 of the Cr.P.C, and finds the same necessary, the trial Court is at liberty to do so.

16. Rule is made absolute in the aforesaid terms.
17. Petition is disposed of accordingly.
18. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.