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

CRIMINAL APPLICATION NO.36 OF 2009

M/s. Yogiraj Cattle Feeds,
Through its Proprietor,
Shri. Kannhayalal s/o
Manakchand Chopda,
Age: 49 years, Occu: Business,
R/o. Supa, Tq. Parner,
Dist. Ahmednagar

..APPLICANT

VERSUS

Govind Baba Sahakari Dudh Utpadak
Sanstha Maryadit, Mungshi,
Tq. Parner, Through

1. Shri. Dhondibhau s/o
Kisan Dagabaj (Chairman)
Age: 51 years, Occu: Agriculture,
R/o. Dagabaj Mala, Mungshi,
Tq. Parner, Dist. Ahmednagar

2. Shri. Uttam s/o Baburao
Bhalekar, (Secretary),
Age: 49 years, Occu: Service
and Agri. R/o. Wadner Haveli,
Tq. Parner, Dist. Ahmednagar

..RESPONDENTS

Mr Shantanu Deshpande, Advocate h/f Mr N. V.
Gaware, Advocate for applicant;
Ms. Seema Pawar, Advocate h/f Mr A. G. Talhar,
Advocate for respondents

CORAM : N.W. SAMBRE, J.
DATE : 4th JANUARY, 2017

ORAL JUDGMENT :

Heard.

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2. The petition is by the original complainant in S.T.C. No. 576 of 2004, pending on the file of learned Judicial Magistrate First Class, Parner, District Ahmednagar against respondents herein for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. After trial commenced, Roznama depicts Exh. 127 – an application came to be moved by the accused persons seeking examination of the witness which was allowed and as such, Court recorded the evidence of D.W.1 and his cross-examination.

4. Application Exh.128 thereafter came to be moved seeking recalling of D.W.1 and D.W.2 for examination in chief which application came to be allowed by the learned Magistrate by impugned order dated 7th August, 2008, as such, present application.

5. Relying upon the judgment of the Apex court in the matter of **AG vs. Shiv Kumar Yadav and**

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another reported in **AIR 2015 SC 3501**, particularly observations made in para 29, learned Counsel for the applicant-complainant would urge that incompetency found to be reason for granting application for recalling of the witness is not sustainable. He would invite attention of this Court to the provisions of Section 138 of the Evidence Act so as to submit that the order in which the witness is required to be examined. According to him, the order as such is not sustainable.

6. The learned Counsel for the respondents submits that it is in the interest of justice and to follow principles of natural justice, application Exh.128 came to be allowed. According to her, whether such evidence is admissible or not, would be looked into at the later stage i.e. at the stage of final hearing of the complaint.

7. Having bestowed my thought to the submissions made, what is required to be noted is,

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respondents-accused is required to have complete opportunity of hearing in criminal trial, which results in case of conviction terminating into freedom of individual.

8. Based on the above referred principle, learned Court below has passed order impugned directing further examination in chief of D.W.1 and D.W.2, in my opinion, the Magistrate has every right to decide the manner and mode in which trial before him conducted unless otherwise is put to serious prejudice.

9. Once, defence witnesses are subjected to further examination in chief, the applicant complainant has every right to examine the same. In view of the above, no case for interference is made out. Criminal Application, as such fails and rejected.

(N.W. SAMBRE, J.)