

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

CRIMINAL WRIT PETITION NO. 1406 OF 2017

Mintu Vasant Saliya. ... Petitioner.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Murtuza Najmi i/b. Mr. Rajesh Jain, advocate for petitioner.

Mr. Jatin P. Shah a/w. Ms. Snehankita Munj, advocate for respondent No. 2.

Mr. V.B. Konde-Deshmukh, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : MAY 5, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein is an accused in C.C. No. 851/SS/2014 pending before the Metropolitan Magistrate, 48th Court, Andheri, Mumbai and is being tried for offence punishable under section 138 of the Negotiable Instruments Act. The Petitioner had filed an application seeking adjournment on 9th March, 2017 praying that the accused be allowed to cross-examine the witness. It is a matter of record that the Petitioner had sought adjournment on several dates and therefore, the learned Magistrate was pleased to pass an order “No cross.”. The learned Magistrate has rejected the said application on 9th March, 2017. The Petitioner had orally sought an adjournment on 9th March, 2017 also, after the Magistrate had passed an order of “no cross”. When the said prayer was rejected, the Petitioner had showed his willingness to proceed with the cross-examination. Hence, the matter was called for cross-examination and at that stage, the learned Counsel for the accused had sought an adjournment by making oral request. The learned Magistrate had rightly rejected the application seeking extension of time, as the applicant had not chosen to cross-examine the witness for two years after filing of the affidavit

of evidence. It was apparent on the face of the record that the applicant was protracting the proceedings.

4 The present petition has been filed on 23rd March, 2017. It was scheduled to be heard on 12th April, 2017. However, due to paucity of time, the matter could not be heard.

5 The learned Counsel for the petitioner submits that the Petitioner be granted one opportunity to cross-examine the witness in order to rebut the presumption drawn under section 139 of the Negotiable Instruments Act.

6 It is apparent on the face of the record that the matter is pending since 2014 and therefore, the learned Counsel for the respondent rightly submits that the guidelines issued by the Hon'ble Apex Court is not being followed and therefore, the Petitioner does not deserve an opportunity to cross-examine the witness. The matter

is posted for recording of statement under section 313 of the Code of Criminal Procedure, 1973 on 19th May, 2017.

7 The learned Counsel for the respondent fairly submits that in the eventuality that the Petitioner undertakes to conclude the cross-examination on one day, the respondent would cooperate with the Court.

8 The Petitioner is at liberty to make an application to the learned Magistrate which may be considered in view of the consent given by the respondent herein. The learned Magistrate shall give a particular date for permitting the petitioner to cross-examine the witness.

9 In view of this, the Petition is allowed. The order dated 9th March, 2017 is quashed and set aside in the interest of justice. The

learned Magistrate shall make every endeavour to conclude the matter on or before 9th June, 2017.

10 The Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)