

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

CRIMINAL WRIT PETITION NO.2162 OF 2018

Dwarkesh Dinkar Suryawanshi

.. Applicant

Vs.

Digambar Dagadu Bhagare & Anr.

.. Respondents

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Mr.Vikrant V. Phatate, Advocate for the Petitioner.
Mr.S.R. Chaudhari, Advocate for Respondent No.1.
Mr.S.R. Shinde, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 18, 2018.

P.C. :

The petitioner is facing prosecution for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The trial is pending before the Court of JMFC, Mangalwedha. The matter is pending before the trial Court for a long period of time. On several occasions, the trial was adjourned at the request of the petitioner-accused. The record indicates that the Non Bailable Warrants were issued against him, and, even the order of no-cross was passed. The trial Court has indeed shown much latitude to the petitioner.

2 However, the petitioner's advocate had conducted the cross-examination of the complainant partly on 7th March, 2018

and the case was adjourned for further cross-examination on 20th March, 2018. On the next date, an application was preferred by the petitioner for adjournment. That application was granted as a last change and the case was adjourned to to 31st March, 2018. On the next date i.e. on 31st March, 2018, the advocate for the petitioner was absent and the accused showed his inability to proceed with the cross-examination. Hence, the Court proceeded to pass an order of no-cross in the first session. The accused, then, preferred an application in the second session seeking an adjournment for further cross-examination, which application was rejected. Thereafter, another application was preferred on 16th April, 2018, for recalling the order of no-cross passed by the trial Court. The said application was rejected by order dated 17th April, 2018. The petitioner is aggrieved by the orders of no-cross and the subsequent order dated 17th April, 2018.

3 It is submitted that grave prejudice will be caused to the petitioner, if the further cross-examination of the witness is not conducted. It is submitted that the matter is kept for hearing before the trial Court today and his advocate is also present and he is willing to proceed with the cross-examination of the complainant. It is also submitted, on instructions, that even the complainant is before the trial Court.

4 Learned counsel for the respondent pointed out the checkered history and the delay caused by the petitioner before the trial Court. He pointed out that time and again the matter was adjourned at the instance of the petitioner-accused. The Court was constrained to issue Non Bailable Warrants, and, at earlier point of time also the Court has passed the order of no-cross, which was set aside subsequently by taking a lenient approach. However, inspite of leniency being shown to the petitioner- accused, he is deliberately delaying the proceedings before the trial Court.

5 It is true that the petitioner is instrumental in delaying proceedings before the trial Court and, time and again, Non Bailable Warrants were issued and also no-cross orders were passed, at the earlier point of time. However, in the interest of justice and taking into consideration the fact that the complainant was partly cross-examined and on that day, the cross examination was deferred due to paucity of time, leniency can be shown and one opportunity can be given to the petitioner, although on subsequent date, the petitioner did not proceed with the cross-examination.

6 Taking into consideration the submissions advanced by the learned counsel for the applicant, that the complainant would be cross-examined before the trial Court today and adjournment will not be sought for the purpose of cross-examination, this Court allows this application. Petitioner's advocate is permitted to take further cross-examination of the complainant and complete the same today during the course of the day. In case the petitioner-accused fails to cross-examine the complainant during the course of the day, the order of no-cross passed by the trial Court shall stand revived. The petitioner is directed to pay costs of Rs.2,000/-, to the complainant for delaying the proceedings.

7 Writ petition stands disposed of with the above directions.

(PRAKASH D. NAIK, J.)