

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

**CRIMINAL WRIT PETITION NO. 2409 OF 2018**

Shri. Sachin Shivmurti Powar ... Petitioner

Vs.

Shri.Imran Inaytulla Bagwan & Anr. ... Respondents

Mr.Sandeep S.Koregave for the Petitioner.

Mr. Anand Patil I/b. Anand Patil and Associates for Respondent No.1.

Ms.Pallavi N.Dabolkar, APP for Respondent No.2.

**CORAM: MRS.MRIDULA BHATKAR, J.**

**DATED: DECEMBER 03, 2018**

**P.C.:**

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.

2. This Petition is directed against the order dated 14<sup>th</sup> August, 2017 passed by the learned Judicial Magistrate First Class, Kolhapur, thereby rejecting the application of the accused to adjourn the matter and allow him to lead evidence.

3. Against the said order, the petitioner/accused preferred Criminal Revision Application No. 124 of 2017 before the Court of Additional Sessions Judge, Kolhapur. By an order dated 13<sup>th</sup> March, 2018, the learned Additional Sessions Judge dismissed the Revision Application.

4. Heard submissions of both the sides. Perused record and the orders passed therein. The present petitioner/accused is facing prosecution under Section 138 of the Negotiable Instrument Act. After recording evidence of the complainant, the statement of the petitioner/accused under Section 313 of the Code of Criminal Procedure ("the Cr.P.C.") was recorded on 5<sup>th</sup> November, 2014. At that time, the petitioner/accused stated that he wanted to lead evidence as the matter is summary in nature. Thereafter, again the matter was taken up for hearing and at that time, by an order dated 12<sup>th</sup> June 2017, the learned Magistrate noted down that, the matter is pending for defence evidence since 14<sup>th</sup> August, 2015 and the accused has failed to lead evidence and no steps were taken by the accused to adduce evidence in respect of D.V.D.

5. Thereafter, the petitioner/accused filed an application praying for setting aside no evidence order against him. On 14<sup>th</sup> August 2017, the petitioner/accused was called repeatedly for argument, however, he was absent at the time of hearing of the application. Hence, in default of accused, the application was rejected on 14<sup>th</sup> August, 2017. Thereafter, the learned Additional Sessions Judge also held it against the petitioner/accused in the revision. Thus, it shows that the petitioner/accused is unnecessarily delaying the matter though the trial Court has initially communicated to lead evidence. It was the duty of the

petitioner/accused to lead evidence. The orders of the trial Court and the Sessions Court cannot be said to be illegal. As in the year 2014, at the time of recording of evidence under Section 313 of the Cr.P.C., the petitioner/accused had specially stated that he wanted to lead evidence and, therefore, in all fairness, I allow the petitioner/accused to lead evidence on two consecutive dates, whichever fixed by the trial Court, on a condition of payment of costs. Hence, I pass the following order:

### **ORDER**

- (i) The learned Judicial Magistrate First Class, Kolhapur is directed to allow the petitioner/accused to lead evidence on two consecutive dates, subject to payment of costs of Rs. 10,000/- to respondent No.1/ original complainant on or before 10<sup>th</sup> December, 2018;
- (ii) If the petitioner/accused wants to lead any documentary evidence, then copy of the same is to be furnished to respondent No.1/ original complainant at least two days in advance;
- (iii) The petitioner/accused shall bring the witnesses without taking further adjournment and shall make them available for cross-examination;

- (iv) Parties to appear before the learned Magistrate on  
10<sup>th</sup> December, 2018 at 11.00 a.m;
- (v) Parties to co-operate.

6. Writ Petition is allowed. Rule is made absolute in the above terms.

**(MRIDULA BHATKAR, J.)**