

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

CRIMINAL WRIT PETITION NO.2279 OF 2017

Sau. Sandhya Sujit Bodgire ... Petitioner

V/s.

Neeta Rajesh Chaudari and anr. ... Respondents

WITH

CRIMINAL WRIT PETITION NO.2280 OF 2017

Shri Sujit Damodar Bodgire ... Petitioner

V/s.

Neeta Rajesh Chaudari and anr. ... Respondents

WITH

CRIMINAL WRIT PETITION NO.2281 OF 2017

Shri Sujit Damodar Bodgire ... Petitioner

V/s.

Nilesh Maruti Chaudari and anr. ... Respondents

WITH

CRIMINAL WRIT PETITION NO.2282 OF 2017

Shri Sujit Damodar Bodgire ... Petitioner

V/s.

Nilesh Maruti Chaudari and anr. ... Respondents

Mr.Uday B. Nighot for the Petitioners.

Mr.Mateen Abdul Rahim Shaikh with Mr.Sajid Qureshi for
Respondent No.1.

Mr.S.R.Shinde, APP for the Respondent/State.

CORAM : PRAKASH D. NAIK, J.

DATE : JULY 27, 2018.

P.C.:

1. In all these petitions the Petitioners have challenged the

order dated 22nd April 2017, passed by the J.M.F.C., Pune rejecting the application for recalling the earlier order passed by the Court directing “No cross”. The order rejecting the application for recall of the earlier order was passed on 22nd April 2017, in all these complaints.

2. The Petitioner is prosecuted for offence under Section 138 of the Negotiable Instrument Act. The complaints are pending in the court of J.M.F.C., Pune. The affidavit of evidence of the complainant was tendered on 11th September, 2015. On 5th January 2016, learned Magistrate rejected the application for adjournment (Exh.22). The Respondent No.1 preferred application (Exh.21) for passing “No cross” order against the Petitioner and for giving exhibit numbers to documents filed by her. The Court allowed the application by order dated 4th February 2016 and passed “No cross” order. The Petitioner contends that, he was present in Court regularly though his advocate was absent. The trial court gave exhibit numbers to documents and adjourned the case. The Respondent No.1 filed application for closing her evidence on 2nd March 2017 which was adjourned to 1st April 2017. On the next date i.e. 1st April 2017,

the Petitioner appointed another advocate. The case was adjourned to 22nd April 2017. The Petitioner filed application (Exh.48) for setting aside “No cross” order and also seeking permission to cross-examine the complainant. The said application was rejected on 22nd April 2017. The grievance of the complainant before the Trial Court is that inspite of adducing the evidence of the complainant the accused did not proceed with the cross. The matter was adjourned from time to time and the the accused had trial to protract the proceeding system. Learned Advocate for the Petitioner submitted that the Petitioner-accused was attending the proceedings before the Trial Court, however, the Advocate representing him was in difficulty and hence, adjournments were sought for conducting cross. It is submitted that subsequently the Petitioners have changed the Advocate, who is willing to proceed the cross-examination of the complainant without causing further delay. It is submitted that on the next date of hearing, the Advocate for the Petitioner would proceed with the cross-examination of the complainant and would conclude the same expeditiously.

3. Learned counsel for the Respondent submitted that the

cheque was issued in 2014 and the complaint was filed in the same year and since last four years the trial is not concluded although the proceedings are summary. It is submitted that ample opportunities were given to the accused to conduct cross-examination of the complainant, but inspite of that, the accused did not proceed with the cross-examination. It is submitted that even on 27th April 2017, the Court was willing to allow the accused to proceed with the cross-examination, although the Trial Court had passed "No cross" order on the earlier occasion. However, the accused did not proceed with cross. It is submitted that the accused have delayed the proceedings and hence the court had rejected the application preferred by the accused.

4. On perusal of the documents, it is apparent that the proceedings are indeed pending since 2014. The examination-in-chief in the form of affidavit was tendered by the complainant before the Court in 2015. Since then the cross-examination is not conducted at the instance of the accused. The accused was, however, remaining present before Court and sought adjournments. It is noted that on 22nd April 2017, when the

impugned order rejecting the application for recall of the order of “No cross” was rejected, the court had asked the accused to proceed with the cross-examination, however, since the newly appointed Advocate was not ready with the matter for cross-examination, he could not proceed with the cross of the complainant. However, as stated above, the Petitioners have undertaken that they would proceed with the cross-examination without any further delay. Although at the instance of the accused, there has been delay in proceeding with the matter, in the interest of justice and to give an opportunity to the accused to conduct the cross-examination which would otherwise cause prejudice to his defence, the impugned order is required to be set aside.

5. In the circumstances, I pass following order:-

ORDER

(i) The impugned order passed by the Trial Court directing “No cross” and order dated 22nd April 2017, passed in all these applications, rejecting the application for recall of order of “No cross” are set aside. The Petitioner is permitted to conduct cross examination of complainant.

- (ii) The Petitioner is directed to proceed with the cross-examination of the complainant on the next date of hearing i.e. 23rd August 2018, and conclude the cross expeditiously.
- (iii) The Petitioner shall not cause further delay in trial.
- (iv) The Petitioners shall pay cost of Rs.2000/- in each matter. The costs shall be paid to the complainant within a period of two weeks from today.

(PRAKASH D. NAIK,J.)

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Priya Rajesh
Soparkar

Digitally signed by
Priya Rajesh Soparkar
Date: 2018.08.04
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