

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

WRIT PETITION NO. 2516 OF 2018

Premchand Resorts & Apartments Pvt. Ltd. & Ors. ... Petitioners

Vs.

The State of Maharashtra & Anr.

... Respondents

...

Mr. Ramesh Dube Patil I/b Mr. N.K. Singh for the Petitioner.

Mr. A.R. Patil, APP for the Respondent-State.

Mr. Vinay Bhanushah for the Respondent No.2.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 19th JUNE, 2018.

P.C.

1. Petitioners are prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in respect of the complaint filed by the respondent No.2. Petitioners have preferred this petition challenging the order of no cross passed by the Trial Court on 4th May, 2018 and order dated 29th May, 2018 issuing non bailable warrant against petitioner Nos. 2 and 3.

2. Apparently, the proceedings are pending before the trial Court since 2nd April, 2016. This Court by order dated 14th February, 2018 passed in Writ Petition No. 4849 of 2017 directed that the cross-examination of the complainant be completed before

31st March, 2018. The examination in chief of the complainant was recorded in April, 2017. The complainant had therefore preferred the aforesaid petition for expediting trial. The learned advocate for the petitioners submitted that the matter was posted before the trial Court on 9th February, 2018 and the same was adjourned to 17th February, 2018. On perusal of the Roznama, it is apparent that the complainant was present with his advocate and the accused were absent. Application for exemption was preferred on behalf of the accused, which was allowed and time was granted to them as a last chance. On 17th February, 2018, the complainant was present with his advocate, however the accused was absent. The advocate representing the accused was present. The advocate for complainant filed order dated 14th February, 2018 passed this Court on record. It was also prayed that, advocate for accused be allowed to complete cross-examination till 31st March, 2018. The Roznama dated 17th February, 2018 pointed out by advocate for petitioner indicate that, the Court had recorded that, the cross-examination of accused was already closed on 13th September, 2017. The High Court in Writ Petition preferred by complainant, it is directed that cross-complainant be recorded till 31st March, 2018. Hence, the case was adjourned to 9th March,

2018. Thereafter, on 9th March, 2018, the proceedings were adjourned to 26th March, 2018. The complainant and his advocate were present and the accused were absent, their advocate was present. The case was then adjourned to 26th March, 2018 for cross-examination. On the subsequent day, the complainant was absent, his advocate was present. Accused was absent but his advocate was present. The matter was then adjourned on 13th April, 2018. Subsequently, on 13th April, 2018, the Court was not available and hence, the proceeding was adjourned on 17th April, 2018. On the next date i.e 17th April, 2018 the board was discharged and the case was adjourned to 21st April, 2018. On the subsequent date i.e 21st April, 2018, the advocate for both the sides were present. An application for exemption was preferred on behalf of the accused and the accused was exempted on that day subject to cost of Rs.5000/- to be paid to complainant. An application for adjournment was preferred by the accused, was granted as a last chance. The case was adjourned to 4th May, 2018. On the next date as per Roznama produced by the advocate for petitioner, the complainant was absent but his advocate was present. The accused was absent and his advocate was present. An application for adjournment and exemption was rejected. The

trial Court, then proceed to pass order of “no cross” and adjourned the case to 29th May, 2018. Thereafter on the next date the trial Court issued non-bailable warrant against the petitioner Nos.2 and 3. Advocates for both sides were present. The case was posted for recording statement under Section 313 of Code of Criminal Procedure. It is submitted that on some occasions as apparent from the Roznama accused were absent and the application for exemption was preferred at the instance of the petitioners. It is submitted that the matter is kept for hearing before the trial Court on 20th June, 2018 are willing to proceed with the cross-examination of the complainant. It is submitted that no adjournment will be sought at the instance of the accused and the cross-examination will be completed within one week commencing from today. It is further submitted on instructions that the accused would attend the proceedings before the trial Court unless they are exempted. They would not delay the proceeding and would remain present at the time of recording statement under Section 313 of Code of Criminal Procedure. The said statements are accepted as an undertaking to the Court.

3. Mr. Bhanushali, learned counsel for the respondent No.2 submitted that the accused had protracted the proceedings on

several occasions and remained absent, and therefore, warrants were issued against them repeatedly. The Court was constrained to issue non-bailable warrant against petitioner Nos.2 and 3 on 29th May, 2018, as they remained absent on that day. He further submitted that several opportunities were given to the petitioners to conduct the cross-examination of the complainant. However, from time to time the accused had remained absent or sought adjournment and prolonged the cross-examination. The court was justified in passing order of no cross. The counsel for the respondent-complainant on instructions submits that the complainant was regularly present before the Court except on last two occasions i.e 29th May, 2018 and 12th June, 2018.

4. On perusal of the Roznama, accused was indeed absent and was exempted as reflected in Roznama referred to above. It is also apparent that cross was closed earlier. This Court in the petition filed by complainant had directed that the cross-examination be concluded before 31st March, 2018. The proceedings before the trial Court were also expedited. On perusal of Roznama from 17th February, 2018 indicate that accused were absent on 17th February, 2018 but his advocate was present, case was adjourned to 9th March, 2018. Thereafter it was adjourned to 26th March,

2018 and 3rd April, 2018 which was beyond 31st March, 2018. The case was adjourned to 17th April, 2018 and then to 21st April, 2018 and 4th May, 2018. Thereafter, no cross-order was passed on 4th May, 2018. However, in the past the history of the proceedings show that the petitioners had remained absent on several occasions. To strike the balance between the rights of accused to defend themselves and complainants interest, the following order is passed.

ORDER

- i) The petitioners are directed to commence the cross-examination of the complainant on 20th June, 2018 and the same be concluded within a period of one week;
- ii) The petitioner Nos.2 and 3 shall remain present before the trial Court on every date of hearing unless exempted by the trial Court;
- iii) The petitioners shall remain present during recording of the statement of accused under Section 313 of the Code of Criminal Procedure, 1973;
- iv) The complainant will be at liberty to examine any other witness if he deems fit and proper;
- v) The accused are also at liberty to enter into defence

and examine any defence witness, if they deem fit and proper;

vi) The order dated 4th May, 2018 as well as 29th May, 2018 passed by 48th Metropolitan Magistrate Court, Andheri of “no cross” and “issuing non-bailable warrant” against petitioner Nos. 2 and 3 are set aside;

vii) The trial Court is directed to conclude the trial within a span of three months from today.

viii) The petition stands disposed of.

(PRAKASH D. NAIK, J.)