

Vidya Amin.

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

**CRIMINAL WRIT PETITION NO. 3126 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 3127 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 3130 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 3131 OF 2018**

Shreyash Infraprojects & Builders Pvt. Ltd. & Ors. ... Petitioners

VS.

The State of Maharashtra & Anr.

... Respondents

Mr. Sangram Lotankar, Advocate for the petitioners.

Ms. Pallavi N. Dabolkar, APP for the respondent no. 1/State.

Mr. Vivek Patil I/b. Samadhan A. Kashid, Advocate for respondent
no. 2.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 14th December, 2018

P.C. :

Rule. Rule made returnable forthwith. By consent, all the four Writ Petitions are heard together and decided at the stage of admission, as common issue is involved in all these Writ Petitions.

2. These four Writ Petitions are directed against the order dated 18th June, 2018 passed by the learned Metropolitan Magistrate, Mazgaon, Mumbai in Case Nos. 247/SS/2016, 248/SS/2016, 249/SS/2016 and 250/SS/2016 wherein no cross order is passed

by the Metropolitan Magistrate, Mazgaon, Mumbai.

3. The learned counsel for the petitioners/accused has submitted that the petitioners have good case. There are four cases of dishonour of cheques. The total amount is approximately Rs.17 lakhs. He has submitted that due to certain difficulty on the part of the counsel, the complainant could not be cross-examined by the accused. He be given the opportunity for cross-examination and no cross dated 16th February, 2018 and 18th June, 2018 passed in these matters is to be set aside.

4. The learned counsel for the respondent no. 2/original complainant has opposed the Petitions and submitted that examination-in-chief of the complainant is filed on 12th July, 2017 and since then, the complainant though is appearing in the Court, is not cross-examined. The learned counsel supported the order passed by the learned Metropolitan Magistrate.

5. Read the order dated 18th June, 2018 passed by the learned Metropolitan Magistrate. It is a reasonable order wherein the learned Judge has stated that earlier twice no cross order was set

aside by giving sufficient opportunity to the accused persons to take cross-examination. The order cannot be faulted with. However, in view of the submissions made by the learned counsel for the petitioners, I allow the prayer of setting aside no cross on following conditions with a view to give opportunity to the petitioners/accused to put up their defence:

- (i) The order dated 16th February, 2018 passed by the learned Metropolitan Magistrate is set aside;
- (ii) The order dated 18th June, 2018 passed by learned Metropolitan Magistrate, Mazgaon refusing to allow cross is also set aside;
- (iii) The petitioners/accused are allowed to cross-examine the complainant on the condition that they shall pay cost of Rs.1,00,000/- to the complainant, which can be paid in three instalments. The petitioners are directed to pay Rs.25,000/- on 17th December, 2018; further Rs.25,000/- on or before 22nd December, 2018 and the remaining Rs.50,000/- on 28th December, 2018;
- (iv) Parties to remain present before the Metropolitan Magistrate on 17th December, 2018 at 3 p.m. The

complainant may appear before the learned Magistrate for cross-examination and the learned Magistrate to fix the schedule for cross-examination. Parties to cooperate.

6. The Writ Petitions are allowed.

(MRIDULA BHATKAR, J.)