

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

CRIMINAL WRIT PETITION NO. 4287 OF 2017

Shrikrishan Jindal & Ors

... Petitioners

Vs.

M/s Mukesh B. Jhaveri & Anr.

... Respondents

...

Mr. Girish Agrawal for the Petitioners.

Mr. Yaduesh M. Terse for the Respondent.

Mrs. M.R. Tidke, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 31st JULY, 2018.

P.C.

1. The contention of the petitioners is that the petitioners have filed complaint against respondent No.1 before the Trial Court for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on 16th August, 2014. The process was issued by the trial Court against respondent No.1 and 2 for the said offence. Plea was recorded on 8th May, 2015. The affidavit was tendered by the petitioners on 30th June, 2015. Documents submitted by the petitioners were exhibited in evidence and the case was adjourned for cross-examination on 27th August, 2015. The respondent failed to conduct cross-examination. Trial Court issued bailable warrant on 4th November, 2015. Respondent No.1

filed application for stay of warrant, which was rejected on 5th November, 2015. Trial Court issued non-bailable warrant on 5th December, 2015 and adjourned the matter to 8th January, 2016. Warrant was cancelled on 7th December, 2015. Application for adjournment was preferred on 8th January, 2016 which was allowed with cost. On 19th January, 2016 again adjournment was sought by accused which was allowed subject to cost of Rs.3000/-. On 25th January, 2016 the respondent No.1 again preferred application for adjournment which was opposed by petitioner by 'say' dated 25th January, 2016. Application was allowed subject to cost of Rs.5000/-. Petitioner filed application dated 25th January, 2016 for no cross order to be passed against respondent No.1 which was rejected and adjournment was granted on 25th January, 2016. The Respondent No.1 filed application dated 10th February, 2016 for exemption which was opposed by petitioners. The Respondent No.1 also filed application for adjournment. Both applications were rejected. Petitioner filed application dated 10th February, 2016 for issuance of non-bailable warrant which was granted and matter was adjourned to 22nd February, 2016. The Respondent No.1 again filed an application for adjournment on 26th February, 2016 which was allowed subject to cost of

Rs.7,000/-. The Respondent No.1 again sought adjournment which was allowed subject to cost of Rs.10,000/-. Thereafter case was again adjourned from time to time. The petitioner preferred applications on 1st September,2016 and 14th July, 2017 to pass order of no cross. The petitioner seeks directions to the trial Court to decide the application dated 1st September, 2016 and 14th July, 2017.

3. This petition was listed before this Court for hearing on 19th March, 2018. This Court in its order dated 19th March, 2018 observed that almost 12 times, the matter was adjourned before the trial Court on one or other pretext so as to protract the prosecution against him. This Court further observed that the conduct of the respondent No.1 of misusing the statutory provisions of right under the Evidence Act for cross-examination by trying to take adjournments for protracting the matter, this Court passed order that the respondent No.1 accused shall deposit the costs of Rs. 50,000/- in this Court.

4. In pursuant to order dated 19th March, 2018, the respondent No.1 had deposited the cost of Rs.50,000/- in this Court. When the matter came before this Court on 19th July, 2018, it was recorded that the order dated 19th March, 2018 has been complied with by

depositing the cost and the next date before the trial Court is 15th September, 2018 and matter was adjourned for final disposal.

5. Learned Counsel for respondent No.1, on instructions, submits that the accused will proceed with the cross-examination of the complainant and the same will be concluded expeditiously. It is submitted that the accused will not delay the proceedings. This statement is accepted as an undertaking to this Court. In view of this, petition can be disposed of with following directions.

ORDER

- (i) The writ petition No. 4287 of 2017 is allowed;
- (ii) The respondent No.1-accused shall proceed with the cross-examination of the complainant on the next date of hearing i.e. on 15th September, 2018 and conclude the same expeditiously;
- (iii) The respondent No.1-accused shall not delay the proceedings further;
- (iv) In case, the respondent No.1-accused fails to conduct the cross-examination, the trial Court will be at liberty to pass order of no cross and proceed with the matter;
- (v) The trial Court is also directed to conclude the trial expeditiously within a period of six months from today;

(vi) The cost of Rs.50,000/- which is deposited in this Court, be transferred to the High Court Legal Services Committee, Mumbai;

(vii) The Writ Petition No. 4287 of 2017 stands disposed of.

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.08.04
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(PRAKASH D. NAIK, J.)