

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

28 CRIMINAL WRIT PETITION NO.1772 OF 2018

Namdeo S/o Hanumantrao Patil (Somvanshi)

Age : 65 years, Occu. Agri.,

R/o Anantwadi,

Tq. Deoni & Dist. Latur.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through Police Station Deoni,
District Latur.

2. Pralhad Tulshiram Suryawanshi,
Age : 56 years, Occu. Service /
Co-operative Officer, Class – 2
Working in the office of Assistant Registrar
Co-operative Society,
Udgir.

... **Respondents**

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Mr. Gopal Kale h/f Mr. G.R.Nagargoje, Advocate for
Petitioner.

Mr. S.P.Sonpawale, APP for Respondent-State.

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CORAM : MANGESH S. PATIL, J.

DATE : 23.01.2019

ORAL JUDGMENT :-

1. Heard. Rule. Rule is made returnable forthwith. With
the consent of both the sides, the matter is heard finally.

2. Accused in Criminal Case S.T.C. No.70 of 2009 has approached this Court seeking intervention under the writ jurisdiction in the process of the trial of the case.

3. I have heard the learned advocate for the applicant. He submits that due to the fault of his learned advocate the petitioner has not been able to contest the trial. Three of the witnesses could not be cross-examined. If opportunity is not extended to him to cross-examine the witnesses, may be subject to costs, it is likely to result in causing serious prejudice to him. He has already engaged another advocate and he undertakes to cross-examine all the witnesses on the same day and therefore, the Writ Petition may be allowed by imposing costs and the orders passed by the learned Judicial Magistrate First Class recording that there was no cross-examination of the prosecution witness Nos.2 to 4 on his behalf may be quashed and set aside.

4. The learned APP submits that the order passed by the learned Judicial Magistrate First Class on the application (Exh.47) is self speaking. He has clearly noted the manner in which the trial was being conducted on behalf of the petitioner. It demonstrates as to how from time to time opportunity was extended to him to cross-examine the

witness. Still he had not availed of the opportunity and allowed the trial to be proceeded without there being any cross-examination of the prosecution witnesses. The matter is now on the verge of hearing arguments and the Writ Petition may be dismissed.

5. I have given a thoughtful consideration to the averments in the Petition. I have also carefully gone through the impugned order passed by the Judicial Magistrate First Class on petitioner's application (Exh.47). As is pointed out by the Magistrate that the case pertains to the year 2009. The charge was framed way back in the year 2010 and was apparently altered in the year 2015. The first witness was examined on 11.05.2016. On 28.04.2017 couple of more witnesses were present. The petitioner had moved an application for stoppage of the case under Section 258 of the Cr.P.C. That application was rejected and when the witnesses were ready and present still an adjournment was sought on his behalf by filing an application (Exh.37). The adjournment was granted to him and the matter was fixed on 28.04.2017. But again, another application for adjournment was moved on that day. It was rejected. His learned advocate was present in the Court Hall still he did

not cross-examine the prosecution witness Nos.2 and 3. When the petitioner himself began cross-examining the witness, his learned advocate is stated to have made a gesture indicating that he should not cross-examine the witness.

6. Even thereafter when P.W.4 was present and an application for adjournment was moved Exh.43 but it was rejected, still the cross-examination was not conducted.

7. The learned Magistrate has specifically noted as to how at every juncture an attempt was made on behalf of the petitioner to protract the case, even when the witnesses were present. After noting all the tactics being employed by the petitioner, the learned Magistrate apparently had found no other option but to reject the application (Exh.47) moved by the petitioner for recalling the witness Nos.2, 3 and 4 for cross-examination.

8. In my considered view, the petitioner needs to blame himself for the situation he is in. His conduct during the trial is also indicative of the fact that he is bent upon to protract the trial. In my considered view, this Court in the writ jurisdiction should not interfere in the trial in the fact

situation of the matter.

9. The Writ Petition is dismissed.

10. The Rule is discharged.

(MANGESH S. PATIL, J.)

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vmk/-