

Vidya Amin.

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

CRIMINAL WRIT PETITION No. 1521 OF 2019

M/s. Chemielink & Ors. ... Petitioners
VS.
Deepak R. Shah & Anr. ... Respondents

Mr. Vivek Babar i/b. Mr. Amit P. Ghag, Advocate for the petitioners.
Mr. A.R. Patil, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 25th March, 2019**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order passed on 28th February, 2018 in C.C. No. 2270/SS/2016 by the learned Metropolitan Magistrate. The petitioners are the accused and prosecuted under section 138 of Negotiable Instruments Act. He has partly conducted cross-examination of plaintiff/respondent No. 1 on 3rd November, 2018. The matter was fixed for further cross-examination on 28th February, 2019. On that day, the counsel of the petitioners/accused were present. They moved an application for exemption. The learned Judge allowed the said Application for

exemption on the condition that the cross-examination will be concluded in the second session. The Advocate of the accused could not proceed for further cross-examination in absence of accused, therefore, exemption application was deemed to be rejected and NBW was issued against the accused. The learned counsel while passing NBW has passed the order as follows:

“NBW be issued against the accused. The matter shall not be taken on board for cancellation of warrant.”

The learned counsel submitted that the petitioners/accused are ready to appear before the trial Court and the cross can be concluded.

3. In view of the facts of the case and the order passed therein, no notice is required to the complainant by this Court. I pass the following order:

- (i) Writ Petition is allowed;
- (ii) The order of issuance of NBW against the petitioners/accused is hereby cancelled;
- (iii) The petitioners/accused shall appear before the trial Court on 1st April, 2019 at 11.00 a.m. and shall also given notice to the complainant to enable the

complainant to remain present before the Court on 1st April, 2019;

- (iv) The trial Judge may fix the matter on or before 20th April, 2019 and the Advocate for the petitioners/accused to proceed with further cross-examination.
- (v) The cross-examination is to be concluded preferably in one or two sessions;
- (vi) Parties to cooperate the learned trial Judge.

4. Parties to act upon the authenticated copy of this order.

(MRIDULA BHATKAR, J.)