

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

CRIMINAL APPLICATION No. 447 OF 2019

Niraj Gunwant Kakkad

...Applicant

Versus

Taro Vazirani & Anr.

...Respondents

Mr.Ram Mani Upadhyay for the Applicant.

Mr.Daljeet Singh Bhatia for Respondent No.1.

Mr.A.R.Patil, APP for Respondent No.1-State.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 23 APRIL 2019

P.C.:

1. In this Criminal Application, the orders dated 11th February, 2019 and 19th March, 2019 passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in C.C. No. 6510/SS/2017 are challenged.

2. Heard submissions of both the parties.

3. Perused record and the impugned orders. The applicant/accused is facing prosecution under section 138 of the Negotiable Instruments Act. The evidence of the complainant is over. It appears that on 2 to 3 dates,

the cross-examination of the complainant was not conducted and, therefore, the learned Magistrate has imposed the cost of Rs.5,000/- on the applicant/accused on 16th November, 2018. Thereafter, the complainant closed his evidence and filed a pursis. The matter went proceeded without cross-examination and it was fixed for recording the statement of the accused under section 313 of the Code of Criminal Procedure (for short, "the Cr.P.C.") on 11th February, 2019. On that date, the learned Counsel of the accused wanted to place an application for allowing him to cross-examine the complainant, however, the accused was not present because he was arrested in another offence punishable under section 138 of the Negotiable Instruments Act on 09th February, 2019, and he was bailed out on 11th March, 2019. However, the learned Magistrate has rejected the application of the applicant/accused and dispensed with the statement of the accused under section 313 of the Cr.P.C. The applicant/accused moved an application under section 311 of the Cr.P.C. for recalling PW-1. The said application was rejected by the learned Magistrate on 19th March, 2019.

4. It appears that the defence did not conduct the matter promptly whenever the matter was scheduled. The orders passed by the learned

Magistrate are reasoned. However, as the learned Counsel appearing for the applicant/accused has submitted that the applicant/accused is ready to go ahead with the matter on the dates whichever the learned Magistrate will fix and shall not ask for further adjournments and with a view to give a fair opportunity to the applicant/accused, I am inclined to quash and set aside both the orders.

5. The learned Counsel for respondent No.1/ complainant submits that if the accused is allowed to cross-examine PW-1, then the complainant may be allowed to lead further evidence, if required.

6. This prayer of the complainant is reasonable and thus, I dispose off this Criminal Application with following order :

ORDER

- (i) The orders dated 11th February, 2019 and 19th March, 2019 passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier are hereby quashed and set aside, subject to payment of costs of Rs.20,000/- on 25th April, 2019 to the complainant i.e., respondent No.1, as the

matter is scheduled by the learned Magistrate on the said date;

(ii) The defence Counsel shall cross-examine the complainant on the same date or on the date which is fixed by the learned Magistrate;

(iii) Both the parties shall co-operate the learned Magistrate;

(iv) If the application is filed for leading evidence by the complainant, then it is to be allowed.

7. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)