

CRIMINAL WRIT PETITION NO. 1937 OF 2019

Mr. Ashok Pandire, for petitioner.
Mr. A.R. Patil, APP for State.

CORAM : **S. S. SHINDE, J**
DATE : **24th June 2019**

1. Heard learned counsel appearing for the petitioner. Learned counsel invites attention of this Court to the pleadings and grounds taken in the petition, and also impugned order and documents placed on record and submits that in the interest of justice, one more opportunity deserves to be given to the petitioner to cross examine the complainant i.e. PW 1 Yashwant Krushnarao Saraf.

2. Heard learned counsel appearing for the petitioner. Perused reasons assigned in the impugned order passed by learned Sessions Court, Kalyan and also by 5th Joint Civil Judge Junior Division & JMFC, Ulhasnagar. It would be apt to reproduce herein below para 3 of the order passed by the said court.

3. I have heard both the parties. Perused the record. The affidavit of examination-in-chief of the complainant was filed on record on 4.4.2012 and the no cross order was passed by my learned predecessor on 8.5.2013. The record reveals that thereafter matter was posted for return of

warrant as the accused was absent. Warrant was cancelled by the accused on 26.2.2014. Thereafter, again warrant was issued which was again cancelled by the accused on 1.7.2014. Thereafter, matter was posted for statement of the accused u/s. 313 of Cr.P.C. The accused had sought adjournment vide application below Exh. 50. Thereafter, the accused had made application has been made for setting aside no cross order. From the record it seems that accused has been consistently remained absent and due to which the matter has been prolonged. Twice NBW was issued against the accused after no cross order was passed against the accused. This shows that accused is not at all willing to contest the matter on merit and prolonging the same. The application under order is narrating the transaction and as to how accused has been allegedly cheated, but the application is not making out any reason as to why the accused was not able to cross examine the complainant and what had prevented him from conducting the cross-examination. The application seems to be made casually and is not disclosing any reason as to why the order needs to be set aside. Due to these reasons I do not find any reason to set aside the no cross order. Hence, I proceed to pass the following order:-

ORDER

Application stands rejected."

3. Upon perusal of reasons assigned by both the Courts below and particularly in para 3 of the order of learned Magistrate, it is abundantly clear that inspite of number of opportunities given to the petitioner, petitioner failed to attend the proceedings and cross examine the complainant. Apart from it, twice NBW was issued by the concerned Court to secure presence of petitioner. By any stretch of imagination, the prayer of the petitioner cannot be acceded to. Hence, petition is devoid of any merits and same stands rejected.

[S. S. SHINDE , J]