

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

**CRIMINAL APPLICATION NO. 841 OF 2019
WITH
CRIMINAL APPLICATION NO. 842 OF 2019**

Aushim Khetarpal

...Applicant.

VERSUS

Sony Pictures Network India Pvt. Ltd. and Anr.

...Respondents.

.....

Mr. Rishi Bhuta a/w. Mr. Ujjwal Gandhi i/b. Mr. Kamlesh Jain, Advocate for Applicant.

Mr. N.B. Patil, APP for Respondent – State. (In APL No.841 of 2019)

Mr. S.R. Agarkar, APP for Respondent – State. (In APL No.842 of 2019)

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**CORAM : S. S. SHINDE J.
DATE : 12th JULY 2019.**

P.C.

1. Heard.

2. Being aggrieved by the orders passed below exhibit 1 in Criminal Case No.1869/SS/2008 and 1870/SS/2008 passed by the learned Metropolitan Magistrate's 43rd Court, at Boriwali, Mumbai on 06th July, 2019, the aforesaid applications are filed by the applicants invoking jurisdiction of this court under Section 482 of the Criminal Procedure Code.

3. Learned counsel appearing for the applicant submits that, unless the proper and sufficient opportunity is given to the applicant to cross-examine the

complainant, there may not be proper adjudication of the pending case. If the complainant is called for cross-examination on particular date, the Advocate for the applicant will cross-examine him on very same day. In support of aforesaid contention he sought to rely upon the judgment of this Court in the case of **Aeltemesh Rein v. State of Maharashtra, reported in 1980 CRI. L.J. 858.**

4. Learned counsel appearing for the applicant submits that, non bailable warrant (for short 'NBW') has been issued against the applicant. The applicant was not present on date of issuance of NBW, however he instructed his Advocate to seek explanation from appearing on said date. The Advocate appearing for the applicant prayed before the Trial Court for exemption of the applicant from appearance, however learned Magistrate issued NBW. It is submitted that, the matter posted for pronouncement of judgment on 15th July 2019.

5. Upon hearing the learned counsel appearing for the applicant and perusal of the orders impugned in this application, there is no doubt that, applicant is trying to keep himself out of the reach of the Court, as rightly observed by the Trial Court in the impugned order. The applicant made every endeavor not to attain the case before the Trial Court. Learned Magistrate has rightly observed that, the cases are pending from the year 2008, non bailable warrant was issued and proclamation was also issued against applicant, as the

non bailable warrant was not executed on the applicant and there is attempt to change the advocate time to time on the part of the applicant, and also the applicant is not causing appearance before the Trial Court.

6. By any standard, the conduct of the applicant cannot be countenanced. The learned Magistrate is justified in making the observations in the impugned order and rejecting the prayer of the applicant to allow him to cross-examine the complainant when the applicant i.e. accused has not caused the appearance before the Court, pursuant to the issuance of non bailable warrant. Admittedly, the case is pending before the learned Metropolitan Magistrate, against the applicant for the offence punishable under Section 138 of the Negotiable Instrument Act. The mandates of the said Act, as reflected in Section 143 of the said Act, requires that trial should be expedited and needs to be completed within six month from date of filing proceeding/complaint before the concerned Court.

7. It would be apt to reproduce herein below Section 143 of the Negotiable Instruments Act, 1881, which reads as follows:

1]143. Power of Court to try cases summarily.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as

far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

(Underlines added)

8. The Hon'ble Supreme Court in the case of ***Indian Bank Association & others Vs. Union of India & Others reported in (2014) 5 Supreme Court Cases 590*** while issuing directions, for appropriately dealing with the cases under Section 138 of the NI Act, in Para 21(5) directed as under:

(5) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within the three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in

Court. Witnesses in the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.

9. In that view of the matter, showing any indulgence by this Court to cause interference in the impugned orders, would amount to defeating legislative intent reflected in Section 143 of the Negotiable Instrument Act, and also may be contrary to aforesaid direction issued by the Hon'ble Supreme Court in the case of ***Indian Bank Association & others*** (supra).

10. For the reasons aforesaid, both the applications stands rejected.

[S.S. SHINDE, J.]