

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6030/2019

VISHWAS PANDIT JAPE **PETITIONER.**

VERSUS

RUPEE COOPERATIVE LTD. & ANR. **RESPONDENTS.**

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Mr.Nandkumar B. Sawant, Advocate for the Petitioner.

Mr.A.R.Kapadnis, APP for the State.

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CORAM : A. M. BADAR, J.

DATE : 18TH DECEMBER 2019.

P.C.:

1. Considering the nature of controversy involved in the instant petition, it is not necessary to issue notice to respondent No.1/original complainant. This is because application at Exhibit 58 was moved by the petitioner/accused in the appellate court seeking exemption from personal appearance and that application came to be rejected by the

learned appellate court without calling any say of the respondent no.1/original complainant. As such, there is no need to issue notice to the respondent no.1.

2. Heard learned counsel appearing for the petitioner. He argued that the Judgment and Order passed by the learned trial court regarding conviction for the offence punishable under Section 138 of the Negotiable Instrument Act came to be challenged by the petitioner, before learned Sessions Court by filing Criminal Appeal No.520/2014. It is further argued that the petitioner/accused has already filed his written notes of arguments in the Appeal filed by him challenging his conviction and because of old age of the petitioner, he was not in a position to attend lower appellate court. Therefore, the application for exemption from personal appearance was came to be moved but the same was rejected by the impugned order.

3. The learned Additional Public Prosecutor supported the impugned order.

4. I have considered the submissions so advanced and perused the application at Exhibit 58 as well as the impugned order passed thereon, rejecting the said request for grant of personal exemption.

5. Application at Exhibit 58 moved at the Appellate Court makes it clear that the written arguments in support of the appeal lodged by the petitioner were already placed on record. Exemption was sought on the ground of sickness of the petitioner. However, the said application came to be rejected with observation that the petitioner/convicted accused is dodging the Court by avoiding appearance and delaying hearing of the matter. With these observations, the Non-Bailable Warrant came to be issued against the petitioner by the impugned order.

6. Learned counsel for the petitioner makes a statement on instructions that, the petitioner/accused would appear on all

dates of hearing in Criminal Appeal No.520/2014 before lower appellate court and will cooperate the lower appellate court in deciding the appeal expeditiously. This statement is accepted. Therefore, now there is no propriety of securing appearance of the petitioner before lower appellate court in execution of non bailable warrant which is directed to be issued by the impugned order. Therefore, I proceed to pass following order.

ORDER

1. The Petition is disposed of by directing the Petitioner to appear in the lower Appellate Court on each and every date of hearing in Criminal Appeal No.520/2014.
2. Consequently, the Order directing issuance of Non-bailable Warrant passed on application-Exhibit 58, is quashed and set aside.
3. The parties to act on authenticated copy of this Order.

(A. M. BADAR, J.)