

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

CRIMINAL APPLICATION NO.1712 OF 2019

Manu Gowda

versus

N.M. Entertainment & Anr.

.... Applicant

... Respondents

.....

- Mr.Dhrutiman S. Joshi, Advocate for Applicant.
- Ms.Gauri Raghuvanshi, Advocate for Respondent No.1.
- Mr.A.R. Patil, APP for State.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th DECEMBER, 2019

P.C. :

1. The Applicant is praying for setting aside the order dated 26/06/2019 passed below Ex.33 in C.C.No.801/SS/2017 by the Metropolitan Magistrate, 58th Court, Bandra, Mumbai. By the said order the application preferred by the Applicant for recalling the complainant for cross-examination was rejected.

2. The Applicant is facing the trial for offence punishable u/s 138 of Negotiable Instruments Act. The trial is pending since the year 2017. The learned Counsel for the Applicant states that he himself is appearing in the trial Court for the accused. The cross-examination of the complainant had started on

16/11/2018. The case was part heard. On 08/02/2019 adjournment was sought on behalf of applicant/accused. On 18/03/2019, the trial Judge closed further cross-examination of the witness as the Applicant and his advocate were not present. The Applicant thereafter preferred the application for recalling the witness. The said application below Ex.33 was rejected by the impugned order.

3. Learned Counsel for Applicant submitted that on that particular date i.e. on 18/03/2019 when the matter was called out, though he was in the Court premises, he could not enter the Court room and the cross examination could not be conducted. He submitted that in the interest of justice it is necessary that an opportunity is given to the Applicant to conduct the cross examination and to proceed with the trial.

4. The Applicant's submissions are vehemently opposed by the learned Counsel for Respondent No.1 i.e. the original complainant. She submitted that even prior to the commencement of the cross-examination, the Applicant and his

Advocate were absent on most of the occasions and there is no justification for not conducting the cross-examination diligently. She submitted that even in the application made vide Ex.33, no acceptable reason was given for recalling the complainant.

5. I have considered the submissions and perused the documents. The learned Judge has taken into account the fact that the Applicant had offered no proper reason to recall the witness and to some extent the grievance made by the learned Counsel for the Respondent No.1 appears to be true, however the trial can be decided on merits if the evidence is led. Considering the overall circumstances, in my view, the interest of justice would be served if the Applicant is offered one more opportunity to cross examine the witness. However, considering the fact that the Applicant was absent on various occasions and also taking into account the fact that a reasonable explanation was not offered in Ex.33, it is necessary to impose cost on the Applicant and further directions are required to be issued so that the trial proceeds smoothly and expeditiously.

6. Though there is no fault in the reasoning of the learned Magistrate, I am inclined to pass the following order in the interest of justice:

ORDER

- (i) The Criminal Application No.1712/19 is allowed.
- (ii) The order dated 26/06/2019 passed by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai, below Ex.33 in C.C.No.801/SS/2017, is set aside on the condition that the Applicant deposits Rs.20,000/- in the trial Court, within a period of three weeks from today.
- (iii) Out of the said amount the complainant is permitted to withdraw Rs.10,000/-.
- (iv) The Applicant shall cooperate for expeditious disposal of the trial.
- (v) Trial is expedited.
- (vi) Application is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)