

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**42 CRIMINAL WRIT PETITION NO.126 OF 2020**

VASANT S/O. LAXMAN SONAWANE  
VERSUS  
PANDHARINATH S/O. MURLIDHAR SHINDE

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Advocate for Petitioner : Mr. Gawali Amol K.  
Advocate for Respondent : Mr. Rajendra S. Kasar

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**CORAM : SMT. VIBHA KANKANWADI, J.  
DATED : 21<sup>st</sup> DECEMBER, 2020.**

**PER COURT:-**

1. Present writ petition has been filed by the original accused invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the order dated 27.09.2019 passed by the learned Additional Chief Judicial Magistrate, Ahmednagar below Exhibit-37 in SCC No.2291 of 2018 and judgment and order passed by the learned Sessions Judge, Ahmednagar on 13.12.2019 in Criminal Revision No.169 of 2019.

2. Heard learned Advocate Mr. Amol K. Gawali for the petitioner and learned Advocate Mr. Rajendara S. Kasar for the respondent. In order to cut short it can be stated that both of them have submitted their submissions in support of their respective contentions. Perused the affidavit-in-reply filed by the respondent.

3. The short question involved in this case is that at

Exhibit-37, the present petitioner-accused had filed application to examine witnesses named in the application. He wanted to examine 22 witnesses. The said application came to be partly allowed by the said impugned order. The accused was allowed to examine witness no.1, 21, 22 and one witness out of serial no.5 to 10 and 11 to 15.

4. It has been submitted on behalf of the petitioner after taking this Court through entire cross-examination of the complainant taken on behalf of the accused that, none of the witnesses who were present at the time of incident dated 14.01.2018 have been allowed to be examined.

5. The accused in any case is at liberty to take as many as defences as are permissible and though it may be contrary. However, taking into consideration the nature of the proceedings under Section 138 of the Negotiable Instruments Act, it is contemplated that the summary procedure will have to be adopted. Now this Court at this stage does not want to go much deep into the aspect, as to whether the alleged incident dated 14.01.2018 has a relevance with the complaint and the disputed cheque which is alleged to have been issued by the accused. However in order to have a fair trial, one opportunity can be given and amongst 4 names which are stated to be relevant to the incident dated 14.01.2018, the petitioner would be at liberty to examine one person. In fact,

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application Exhibit-37 is very much cryptic and it does not clarify the relevancy of the witness. Unless the relevancy is shown, the Court is not bound to issue summons to any witness. Merely by using word relevant witness, they do not become relevant. The facts are as it may, yet, at the cost of repetition it is stated that in order to give a fair chance to the accused to defend himself, the writ petition is hereby partly allowed.

6. The order passed below Exhibit-37 in SCC No.2291 of 2018 passed by the learned Additional Chief Judicial Magistrate on 27.09.2019 is further modified and the accused is allowed to choose only one witness amongst serial no.16 to 19 mentioned in Exhibit-37.

7. The writ petition stands disposed of.

**(SMT. VIBHA KANKANWADI, J.)**