

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 258 OF 2019**

HASANSA HADAGINAL SHEK.,

... Petitioner

Versus

SHAIKH PEERA.,

... Respondent

Shri Amey Prabhudessai, Advocate for the Petitioner.

Shri T. Gawas, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.**Date:- 4th March, 2020**

P.C.:

Heard Shri Amey Prabhudessai, learned Advocate for the petitioner who submitted that an application was moved by him under Section 311 Cr.P.C. seeking the recall and re-examination of the complainant.

2. On 25.07.2019, when the date was fixed for cross examination, the learned advocate for the complainant had sought for exemption of the complainant and on that count, the matter was adjourned and the next date was listed on

08.08.2019. However on 02.08.2019 the Advocate on record for the petitioner had to rush to his native place since his cousin brother had met with an accident and was able to return only on 10.08.2019 and therefore, missed the date of hearing on 08.08.2019. The learned Judicial Magistrate, First Class however despite this fact had disallowed the application for recall on the ground mainly that the trial of the case had to be completed within six months but that it was pending for the examination of the complainant for more than a year and a half and besides the petitioner had conducted himself in a very casual manner and no application for adjournment was filed. The impugned order was therefore, liable for interference.

3. Shri T. Gawas, learned Advocate for the respondent submitted that the learned Judicial Magistrate, First Class had duly considered the fact that the trial had to be completed within six months and that there was undue delay at the instance of the petitioner in seeking the cross examination of the complainant and had rightly dismissed the application. No interference was called for with the order under challenge and the petition had to be dismissed.

4. i have considered their submissions and from which it is apparent that there was no singular dispute of the fact that the petitioner's advocate had to rush to his native place on

account of the accident of his cousin brother and for which he was not able to attend the hearing on the scheduled date i.e. on 08.08.2019 and he could return only on 10.08.2019. Besides the learned advocate had also placed his train tickets on record to substantiate his absence on the scheduled date of hearing and which fact ought to have been considered by the learned Judicial Magistrate, First Class, while proceeding to dismiss the application. This aspect was totally overlooked by the learned Judicial Magistrate, First Class which cannot be countenanced under any circumstances even considering that he had to dispose off the case in a time bound manner. The reason as set out by the petitioner for the non availability of his advocate had to be given due weightage and it was not a case where the petitioner was seeking adjournment of the case in a very casual and routine manner as observed by the learned Judicial Magistrate, First Class.

5. The order to my mind warrants interference and in view thereof the impugned order is quashed and set aside. The parties to appear before the learned Trial Court on the pre-scheduled date when the learned Judicial Magistrate, First Class will allow the petitioner to further cross examine the complainant. It is however made clear that the petitioner shall not seek any further adjournment on any ground whatsoever.

6. The application is accordingly disposed off with payment

of cost of ₹2000/-which is a condition precedent.

NUTAN D. SARDESSAI, J.

MF/-