

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.6336 OF 2019

Sagar Balasaheb Kolge	...	Petitioner
Versus		
Vijay Homoeo Farmacy Through Prop. Dr.Girish Vijkumar Tathed & Anr.	...	Respondents

• • • • •

Mr.Sumant Deshpande h/f. Mr.Prateek Sabde, Advocate for the
Petitioner.

Mr.A.R.Kapadnis, the Additional Public Prosecutor for the Respondent/State.

• • • •

CORAM : A.M.BADAR J.

DATED : 15th JANUARY 2020.

P.C. :

1 Heard.

2 The challenge in this petition is to the Orders as Annexures A, B and C. Vide Order at Annexure A, the learned trial Magistrate has rejected request of the accused to the effect that the complainant be directed to enter into the witness box for recording his examination-in-chief. By Order at Annexure B, the learned trial Magistrate had recorded “No-cross” Order by

observing that the accused failed to remain present for cross-examination of the complainant. Vide Order at Annexure C passed below Exhibit 20, the learned trial Magistrate has directed the accused to pay 20% of the cheque amount towards interim compensation to the complainant

3 The learned Counsel for the petitioner urged that as the case is being tried as summons case, it is necessary for the complainant to enter into the witness box to adduce evidence. He placed reliance on the provisions of Section 143 of the Negotiable Instruments Act, 1881. The contentions so advanced are devoid of merit because, there is no question of recalling the witness. Section 145 of the Negotiable Instruments Act, 1881 provides for tendering evidence of the complainant on affidavit.

4 So far as the Order passed below Exhibit 20 directing 20% amount of the cheque as interim compensation is concerned, the said Order is perfectly correct and in tune with the Judgment of the Honourable Apex Court in the matter of *Surinder Deswal Versus Virender Gandhi*.¹

5 True it is that the learned Court had proceeded further by recording 'No-cross' Order as the petitioner/accused failed to appear for cross-examination. But grievance for the said Order can be redressed by the learned trial Court itself. For that purpose,

1 2019 Cri.L.J. 3507.

the petitioner/accused is permitted to apply to the learned trial Magistrate for setting aside 'No-cross' Order and if such application is filed, then the learned trial Magistrate is directed to consider the same sympathetically keeping in mind all just exceptions.

6 With these directions, the petition stands disposed of.

(A.M.BADAR, J.)