

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL WRIT PETITION NO. 1077 OF 2019

(Gajanan Wasudeorao Raut ..vs.. Eknath Maroti Bhoyar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.V. Band, Counsel for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 18-12-2020

Heard.

2. The petitioner, who is the complainant in Summary Criminal Case 1275/2016, is assailing the order dated 05-8-2019 rendered by the Joint Civil Judge (Junior Division), Karanja (Lad), District Washim, in exercise of power under Section 311 of the Code of Criminal Procedure and the effect of which is that the petitioner-complainant is recalled for cross-examination.

3. The learned Counsel for the petitioner Mr. A.V. Band would submit, that the reasons put forth do not justify recall. Relying on the decision of the Apex Court in *State of Haryana v. Ram Mehar and Ors., 2016 Cri.L.J. 4666*, Mr. A.V. Band would submit that the reason put forth was that the questions pertaining to the money lending transactions were inadvertently not put in the cross-examination and that the counsel who is engaged subsequently, has noticed the ineffective cross-

examination.

4. The decision of the Apex Court turns on facts. Notably, from the observations of the Apex Court, it is clear that there cannot be a straight-jacket formula. Identical situations are considered by this Court *inter alia* in ***Vikas Sureshrao Waghmare vs. Moreswar Bhausahab Kadam in Criminal Writ Petition 1086 of 2009*** and ***Shri Kishor s/o Anandrao Gaidhane vs. The State of Maharashtra, 2018 All MR (Cri.) 3470***. The alleged offence is of dishonour of cheque and the failure to pay the amount despite receipt of notice. Proof that the complainant is a money lender, is, at least from the perspective of the respondent-accused, of vital significance. In this view of the matter, if the trial Court has found that inadvertent failure of the earlier counsel to put the most material questions in the cross-examination, would result in miscarriage of justice, in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India, I am not inclined to take a different view.

5. The petition is dismissed.

6. The trial Court shall proceed with the trial expeditiously and shall complete the trial in any event, within twelve months.

JUDGE