IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 457 OF 2020

Pramod s/o Manohar Bagul,
Age 29 years, Occ. UTP (Pensioner)
Residing at Savandgaon Shivar,
Tq. Vaijapur, Dist. Aurangabad. … **Petitioner**.

VERSUS

The State of Maharashtra,
Through in charge
Police Station, Vaijapur, Tq.
Vaijapur, Dist. Aurangabad. … **Respondent.**

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Advocate for the Petitioner : Mr. Shejwal Arun S.
APP for the Respondent/State : Mr. S.W. Mundhe.

CORAM : MANGESH S. PATIL, J.
DATE : 14.01.2021.

ORAL JUDGMENT :

Heard the learned A.P.P. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service. Matter is heard finally.

2. The petitioner is facing a charge in Sessions Case No. 72/2016 and the trial in which is going on in the Sessions Court at Vaijapur.

3. It appears that the prosecution examined witness Shashikant Vishwanath Tayade (P.W.9) on 01.01.2020. Since the petitioner's advocate did not turn up to cross-examine the witness, the learned Additional Sessions Judge passed the impugned order to the effect that there shall be no cross-examination of the witness on behalf of the petitioner.

4. The petitioner requested for setting aside that order by filing application (Exh. 84) and by filing application (Exhibit 85) he requested to

recall the witness.

5. By the impugned common order the learned Additional Sessions Judge has rejected both the applications. Hence this petition.

6. As can be seen, the learned advocate for the petitioner did appear before the learned Additional Sessions Judge at late hours but on the same day on which the examination in chief of the witness was recorded. It is not that he had not turned up at all. It is a specific stand of the petitioner that it is because of the inability of the learned advocate that cross examination could not be conducted on his behalf.

7. It is trite principle that *actus curiae neminem gravabit.* The party should not suffer for the mistake of the Court. The procedure is handmaid of justice. It is not that the petitioner was not at all ready to go ahead, with the trial. His attempt to call the witness back by getting the 'no-cross' order set aside is indicative of his alertness. It appears that it is only because of this circumstance that cross-examination of the witness could not be conducted on his behalf. No prejudice is likely to be caused to the prosecution even if the witness is now allowed to be cross-examined on his behalf.

8. The whole approach of the learned Judge is rigid and not conducive to the administration of justice.

9. The Writ Petition is allowed. The impugned common order on the applications (Exhibits 84 and 85) are quashed and set aside. The applications stand allowed.

10. The Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

mkd/-