

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1836 OF 2019

Harappa Ventures .. Petitioner  
Through its Partner,  
Shri Ravikant Ambadas Rathod,  
Age. 33 years, Occ. Business,  
R/o. Appt. Apratim Pushp Apartment,  
Beed Byepass, Satara Parisar,  
Aurangabad.

Versus

1. The State of Maharashtra .. Respondents  
Through its Secretary,  
Law and Judiciary Department,  
Mantralaya, Mumbai – 32.
2. Gajanan Chaganrao Pakhare,  
Age. 42 years, Occ. Business,  
R/o. Sanjay Nagar, Baijipura,  
Smashan Maroti Road,  
Aurangabad.

Mr.Sandip P. Rathod, Advocate for the petitioner.  
Mr.S.N. Morampalle, APP for respondent/State.  
Mr.S.A. Ambad, Advocate for respondent No.2.

CORAM : SURENDRA P. TAVADE, J.  
DATED : 06.09.2021

ORAL JUDGMENT :-

01. Rule. Rule taken for hearing forthwith, with  
the consent of the parties.

02. The petitioner is challenging the order dated 31.08.2019 passed by the 3<sup>rd</sup> Judicial Magistrate, First Class, Aurangabad on Exh.45 in SCC No.9907 of 2017, whereby the request of the petitioner to lead evidence was rejected.

03. The facts giving rise to the present petition can be summarized as under :-

04. The petitioner is facing Criminal Case bearing SCC No.9907 of 2017 before the JMFC, Aurangabad. One Gajanan Pakhare has filed complaint against the petitioner for the offence punishable under section 138 of the Negotiable Instruments Act. In the said case the respondent led his evidence and also closed evidence on his behalf. Thereafter, the Trial Court granted time to the petitioner to lead evidence, but inspite of sufficient opportunity the petitioner did not lead evidence. Hence, the Trial Court passed the impugned

order of closing of evidence of the petitioner, which is challenged in this petition.

05. It is contended on behalf of the petitioner that the valuable right of the petitioner to lead evidence was rejected by the Trial Court. It is contended that as per the provisions of Sections 118, 119 and 139 of the Negotiable Instruments Act, the petitioner has right to lead rebuttal evidence. If said right is refused, irreparable loss would be caused to the petitioner. Hence, it is prayed that the order of the Trial Court be set aside and the petitioner be allowed to lead evidence.

06. On the other hand, learned Counsel for respondent No.2 submits that the statement of the petitioner was recorded on 02.11.2018. Thereafter, the petitioner was allowed to lead his evidence. Since, 23.11.2018 the petitioner sought time to lead evidence till 19.06.2019. Ultimately, the Trial Court closed evidence of the petitioner and the matter was listed for

arguments. He submits that for more than one and half years, the petitioner was given opportunity to lead his evidence, but he simply took adjournments and ultimately did not lead evidence. It is contended that the Trial Court has given sufficient opportunity to the petitioner to lead evidence, but it was not availed by the petitioner. Therefore, order of the Trial Court is just and proper. There is no need to interfere in the said order.

07. Heard Counsel for the petitioner and the respondent. Perused the impugned order. It appears that on 02.11.2018 the statement of the petitioner was recorded under section 313 of Cr.P.C. Thereafter, the matter was adjourned from time to time for evidence of the petitioner on 23.11.2018. Ultimately, on 19.06.2019, the petitioner was present in the Court along with his advocate, but he neither made any application for adjournment nor he adduced any evidence, therefore, the Trial Court suo-moto passed the impugned order and closed

evidence of the petitioner.

08. The petitioner is facing charge under section 138 of the Negotiable Instruments Act. The Negotiable Instruments Act mandates that the proceedings under section 138 are required to be decided within six months from date of filing of the complaint. In the present case, the complaint was filed in the year 2017. Respondent No.2 led his evidence. So it was expected from the petitioner to lead evidence but it appears that for more than one and half years, the petitioner has simply sought adjournment and did not try to lead evidence. Even in this petition also no cause is shown by the petitioner as to why he did not lead evidence, though he was asked to lead the same. Counsel for the petitioner simply made grievance that his valuable right of leading evidence was infringed by the impugned order. Therefore, he prayed for setting aside the impugned order. It is true that the petitioner has right to rebut the presumption enumerated in the Negotiable Instruments

Act, but at the same time it was expected from the petitioner to exercise the same within reasonable time. In spite of giving opportunity to him, he did not lead evidence. In order to decide the case, evidence of the petitioner is just required or petitioner must be given opportunity to lead evidence. The matter is already dragged by the petitioner. Therefore, to meet the ends of justice, the petitioner can be given chance to lead evidence by imposing heavy costs and with certain directions to conclude his evidence in time bound manner. Therefore, in my opinion, the petition is required to be allowed. Hence, I pass the following order :-

#### O R D E R

- i) The petition is allowed.
- ii) The impugned order passed by the Trial Court is hereby set aside with directions to the petitioner to pay costs of Rs.10,000/- (Rupees Ten Thousand) to respondent No.2. In default of payment of costs, the Trial Court shall proceed further without considering evidence of the petitioner.

(7)

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iii) The petitioner is directed to lead his evidence within three weeks from 09.09.2021.

iv) Rule made absolute accordingly.

[SURENDRA P. TAVADE,J.]