

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 2219 OF 2021**

Fazal Mohammed Azizul Haque
Choudhary

....Petitioner

V/s.

1. State of Maharashtra & anr.

....Respondents

* * * *

Mr. Mohammed Wasim Qureshi i/by. Qureshi and Associates, Advocate for the petitioner.

Mr. A.D. Khamkhedkar, APP for State-respondent no.1.

Mr. Tanveer Nizam a/w. Ms. Surbhi Soni i/by. Mr. Manish G. Varma, Advocate for respondent no.2.

Coram : SANDEEP K. SHINDE, J.

September 17, 2021.

P.C. :

1. The petitioner is facing prosecution under Section 138 read with Section 141 of the Negotiable Instruments Act in the proceedings Case No.1130/SS/2018. Petitioner's application to recall the witness/complainant was rejected by the Learned Additional Chief Metropolitan Magistrate, 6th Court at Mazgaon on 9th December, 2019.

This order was confirmed in revision on 25th March, 2021. In these circumstances, the petitioner has approached this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

2. Heard learned Counsel for the parties.

3. Perused the order and the proceedings. Few events essential for the decision of this petition are as under :

SR.NO.	DATE	PARTICULARS
1	15 th September, 2018	Affidavit in Lieu of Evidence filed by Complainant (Respondent No.2). Matter adjourned for Cross Examination.
2	29 th November, 2018	Application for Adjournment filed by Accused (petitioner). Application allowed. Adjourned for Cross-Examination.
3	20 th December, 2018	Application for Adjournment filed by Accused which was allowed subject to cost of Rs.500/-. Adjourned for Cross-Examination.
4	16 th January, 2019	Adjourned by consent of both parties.
5	14 th February, 2019	Complainant present. Advocate for Accused absent. First No Cross Order passed. Adjourned for evidence.
6	13 th March, 2019	Accused first filed Application for Recall of Order dated 14 th February, 2019. Application allowed.
7	13 th June, 2019	Complainant present. Advocate for Accused absent. Second No Cross Order passed.
8	26 th June, 2019	Accused filed second Application for Recall of Order dated 13 th June, 2019. Say given and adjourned for Arguments. Interim Compensation Application filed by Complainant. Adjourned for say (Exh.32).

9	4 th July, 2019	Arguments heard on second application for recall. Adjourned for Orders and Say on Exhibit 32.
10	16 th July, 2019	Application Allowed subject to cost of Rs.5,000/- Adjourned for Say Exhibit 32.
11	8 th August, 2019	Advocate for Accused and Accused Absent. Adjourned for Say on Exhibit 32.
12	5 th September, 2019	Complainant Present. Accused Present. Advocate for Accused Absent. Cost of Rs.5000 paid by Accused.
13	19 th September, 2019	Complainant Present. Accused Present. Advocate for Accused Absent. Third No Cross Order passed. Accused filed Third Appliation for Recall of Order (Exhibit 33). Pursis filed by Complainant for no further evidence (Exhibit 34). Adjourned for 313 Statement of Accused.
14	9 th October, 2019	Both sides present. Argument of Accused heard on third application for recall.
15	14 th November, 2019	Both sides present. Argument of Complainant heard on third application for recall. Adjourned for Orders and Statement of Accused
16	9 th December, 2019	Both sides present. Third Application for Recall rejected. Adjourned for Statement of Accused.
17	6 th January, 2020	Both sides present. Application for Adjournment filed by Accused which was allowed. Adjourned for Statement of Accused.
18	3 rd February, 2020	Application filed by Accused stating stay of proceedings as per the Hon'ble Sessions Court, Bombay.
19		Matter stayed since.

4. The events reproduced hereinabove are sufficient to infer that petitioner has made all efforts to protract the proceedings which are pending since 2018. It is so evident from the date-wise chronology of events, so much to say

that, although “No Cross Order” was passed on 14th February, 2019, application to recall the witness was made on 13th March, 2019. Although, petitioner was afforded opportunity to conduct the cross-examination, he successfully avoided to cross-examine the witness from February, 2019 to September, 2019. In the circumstances, I have no doubt, in my mind, that the applicant deliberately and intentionally made all efforts to protract the trial. May be for the reason that the cheque returned unpaid was for Rs.67,00,000/- (Rs. Sixty Seven Lakhs).

5. In consideration of the facts of the case and the proceedings under Section 138 of the Negotiable Instruments Act being summary in nature, in my view, the Courts below have not committed error in exercise of the jurisdiction. Therefore, no interference is called for. Petition is dismissed. The trial Court shall proceed with the trial and conclude it in accordance with law.

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
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(SANDEEP K. SHINDE, J.)