

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 1332 OF 2021**

Ashraf Ahmed Majal

... Petitioner

**V/s.**

The State of Maharashtra & Anr.

... Respondents

Mr.Imtiyaz Patel i/b. Mr.M.P. Mishra for Petitioner.

Mrs.Rutuja Ambekar, A.P.P. for Respondent No.1-State.

Mr.P.R. Dave for Respondent No.2.

**CORAM : A.S. GADKARI, J.**

**DATE : 15<sup>th</sup> March 2021.**

**PC. :**

The Petitioner has impugned Order dated 21<sup>st</sup> January 2020 passed below Exh.52 in C.C. No. 2787/SS/2012 by the learned Metropolitan Magistrate, 44<sup>th</sup> Court, Andheri, Mumbai, rejecting his application under Section 311 of the Criminal Procedure Code, for recalling the complainant for cross-examination.

2. Heard Mr.Patel, learned counsel for the petitioner, Mrs.Ambekar, learned A.P.P. for the respondent No.1-State and Mr.Dave, learned counsel for the respondent No.2.

3. The record indicates that, on earlier at-least two occasions, 'No-cross' Orders of complainant were passed against the petitioner by the Trial

Court, which were subsequently recalled. As the petitioner did not remain present before the Trial Court, even non-bailable warrants were earlier issued and the same were cancelled. It appears that, this was the third occasion when the petitioner did not remain present for conducting cross-examination of the respondent No.2-complainant.

4. Mr.Patel, learned counsel for the petitioner submitted that, the petitioner and the respondent No.2 were also partners in some other firm and in the interregnum, talks of settlement were going on and therefore, the petitioner and/or his Advocate did not remain present before the Trial Court for conducting further cross-examination of the respondent No.2. He further submitted that, the Trial Court has now scheduled next date of hearing on 19<sup>th</sup> March 2021 and his client will complete cross-examination of the respondent No.2 on that day itself.

5. In view of the above and with a view to grant a fair opportunity to petitioner for cross-examining the complainant, the impugned Order 21<sup>st</sup> January 2020 is set-aside, subject to condition that the petitioner shall pay a cost of Rs.15,000/- (Rs. Fifteen Thousand Only) to the High Court Legal Services Committee, Mumbai on or before 18<sup>th</sup> March 2021.

The petitioner to pay/deposit the said cost in the account namely “High Court Legal Aid Fund”, Account No. 60045304283, IFSC-MAHB0000002 of the Bank of Maharashtra, Branch-Fort, Mumbai-400032,

maintained by the High Court Legal Services Committee, Mumbai, Room No. 105, 1<sup>st</sup> Floor, PWD Building, High Court, Mumbai and to furnish the details of such cost to the High Court Legal Services Committee, Mumbai and obtain the receipt thereof physically or through Email i.e. hclsc.mumbai@gmail.com which shall be the proof of such payment/deposit.

6. Upon the petitioner producing receipt of payment of cost, the Trial Court is directed to permit the petitioner to conduct cross-examination of the respondent No.2-complainant. The petitioner is directed to conclude cross-examination respondent No.2 on 19<sup>th</sup> March 2021 before the end of Court working hours and not to seek further adjournment in the matter. If for any reason, on the count of petitioner, the cross-examination of the respondent No.2 could not be completed by the petitioner and/or his Advocate, the petitioner will not be further permitted to cross-examine the respondent No.2. It is however made clear that, if the Trial Court due to paucity of time at its end could not conclude cross-examination on that day itself, in that event only, the petitioner will be entitled to further continue with the cross-examination of the respondent No.2 on the next date. The petitioner is directed to appear before the Trial Court on each and every date here-in-after, except on medical grounds.

7. Petition is allowed in the aforesaid terms.

8. The record indicates that, the complaint lodged by the respondent No.2 is of the year 2012 and is pending on the file of the Trial court for last eight years. In view thereof, and observations made by the Hon'ble Supreme Court in para No.1, in the case of *Makwana Mangaldas Tulsidas Vs. The State of Gujarat & Anr., reported in (2020) 4 SCC 695*, learned Metropolitan Magistrate, 44<sup>th</sup> Court, Andheri, Mumbai, seized of C.C. No. 2787/SS/2012 is directed to dispose of the said case within a period of three months from the date of receipt of the present Order.

9. All the concerned to act on the basis of the authenticated copy of this Order.

[A.S. GADKARI, J.]

Omkar S.  
Kumbhakarn  
Digitally signed  
by Omkar S.  
Kumbhakarn  
Date:  
2021.03.16  
14:13:28 +0530