

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Writ Petition No. 4472 / 2021

Rajesh Jain and Anr. .. **Petitioners**

Versus.

The State of Maharashtra and Anr. .. **Respondents**

Mr. Hardik Vyas i/by Madan J. Gupta, Advocate for the Petitioners.

Ms. Aparna Devkar i/by Mr. Mahesh B. Karule, Advocate for Respondent No.2.

Mr. A.D. Khamkhedkar, APP for State.

CORAM : SANDEEP K. SHINDE J.

DATE : 24th NOVEMBER, 2021.

P.C. : -

Heard.

1. Petitioners are facing trial in Criminal Case No. 2009/SS/2016 under Section 138 of the Negotiable Instruments Act, 1881. After recording evidence of the parties, the learned Magistrate posted the case on 30th March, 2021 for oral arguments under Section

314 of the Cr.P.C. On 9th March, Petitioners-Accused moved an application seeking, order to recall Witness No.3 - Mr. Ganesh Shinde and sought leave to examine Mr. Rakesh Lohya as a defence witness. The learned Magistrate rejected the application. Order dated on 30th March, 2021, reads as under;

ORDER

“Perused application & say filed on it by complainant and all the material placed on record Heard both sides. This matter is pending since 2016. The record shows that accused made every attempt to delay the matter. Complainant and accused advocate finally argued the matter and when matter kept for further argument of accused this application is filed by accused. It seems that accused just want to delay the matter. I do not found merit in the application. If this application is allowed then it would amount to abuse of process of court. Hence this application is rejected.”

. Whereafter Petitioners approached this Court in writ jurisdiction assailing the order dated 30th March, 2021, whereby the learned Magistrate declined to recall PW-3 and refused leave to examine Mr. Rakesh Lohya, as a defence witness.

2. Petitioner is opposed by the Complainant by

filing reply and also placed on record depositions of the witnesses.

3. I have perused the evidence of Petitioners-Accused. While accused as defence witness was cross-examined, he said he would not examine, Mr. Rakesh Lohya as a defence witness. Taking note of this fact, Petitioners' request to examine Mr. Rakesh Lohya as a defence witness, deserves no consideration. Even otherwise, no other grounds were urged or shown to justify this prayer. Accordingly prayer to examine Rakesh Lohya as a defence witness, is rejected.

4. In so far as prayer to recall the PW-3 is concerned, the only ground on which recall was sought is that earlier lawyer of the accused did not cross-examine him properly. Obviously for this reason prayer to recall cannot be acceded to.

5. In consideration of the facts of the case, in my

view, accused has moved the application with sole purpose to delay the trial and therefore both the prayers are rejected with costs Rs.25000/- on which the accused shall pay to the Complainant within two weeks from today.

6. Writ petition is dismissed.

7. In the facts of the case, the learned Magistrate shall proceed in the C.C. No. 2009/SS/2016 in accordance with law.

(SANDEEP K. SHINDE, J.)

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by MOHAMMAD
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