

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 1169 OF 2022**

Vinayak Ramasheth Vadnere and another

.. Petitioners

Versus

Dharmendra Khemchand Nihalani

.. Respondent

Mr. S. S. Dixit, Advocate for the Petitioners.

Mr. S. K. Shinde, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 01st DECEMBER, 2022.

P. C. :-

1. This is a petition challenging an order dated 24.06.2022 forfeiting the right of accused to cross-examine witness in the proceeding filed under Section 138 of the Negotiable Instruments Act (for short "N. I. Act"). The order was passed on an application filed by the petitioners for adjournment as his advocate was not feeling well. It was objected by the respondent/original complainant that the application was filed only to prolong the matter. On that, the impugned order dated 24.06.2022 came to be passed.

2. Learned advocate for the petitioners submits that it is a valuable right of the accused to cross-examine the complainant in the proceeding filed under Section 138 of the N. I. Act as there is presumption under Section 139 of the N.I. Act. Thus, if the right of

cross-examination is itself taken away, he will not be in a position to rebut the said presumption. Learned advocate further submits that, as a matter of fact, lawyer of the petitioners was not feeling well and therefore, adjournment was sought.

3. Learned advocate Mr. Shinde for respondent pointed out from the roznama that repeatedly adjournments were sought by the accused. From the roznama it is seen that prior to this also no cross order was passed on 21.01.2022. On 11.03.2022 even warrant was issued, but the same was cancelled on that day and also an application for setting aside no cross order was filed bearing Exhibit 29. Exhibit 29 was allowed subject to cost and the same was paid on 21.04.2022. However, in spite of this, the complainant was not cross-examined and therefore, again no cross order was passed. The roznama dated 07.06.2022 shows that application under Exhibit 32 was again filed seeking adjournment and the same was allowed subject to cost of Rs. 350/- (Rs. Three Hundred Fifty only). It is seen that, even thereafter the applications were filed by the accused seeking adjournments. He submits that, looking to the conduct of the accused this order is passed. He pointed out that, the accused was directed to deposit 20% of the total amount of the cheques which is Rs. 21,00,000/- (Rs. Twenty One Lakh only) of the three cheques is

also not paid by the accused and this shows that since beginning the accused is playing dilatory tactics and has not bothered to obey the orders of the Court. He prays for rejection of the petition.

4. Going through the roznama and looking at the conduct of the accused, it does appear that he is deliberately prolonging the proceeding and is not taking part in the proceeding. Though non depositing of 20% of the amount is not matter in issue before this Court, but certainly note can be taken about conduct of the accused. It is true that, the right to cross-examination is a valuable right of the accused, however, at the same time it is for the accused to realize the seriousness of the proceeding before the Court. The proceeding of the Court cannot be taken for granted. Absence of the accused or not taking steps by any of the parties for that matter affects the working of the Court. It is not only other side who suffers due to absence of opposite party, but the entire machinery of the Court is wasted to that extent.

5. Considering this, though this Court is inclined to allow the petition, however, it is necessary to impose cost which should be paid by the accused considering amount of cheques and therefore, the petition is allowed subject to payment of cost of Rs. 25,000/- (Rs. Twenty Five Thousand only) to be paid to the respondent/original

complainant within a period of two (02) weeks from today.

6. In view of the above, writ petition is disposed of.

(KISHORE C. SANT, J.)

P.S.B.