

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1140 OF 2022

Manoji K. Katyal

...Petitioner

vs.

The State of Maharashtra and Another

...Respondents

Mr. Ganesh Gole i/b. Mr. Ateet Shirodkar and Mr. Ashutosh Gangal,
for the Petitioner.

Mr. Darshan Ashar a/w. Mr. Saurabh Deorukhkar i/b. M/s. Sanjay
Udeshi & Co., for respondent No. 2.

Ms. Anamika Malhotra, APP for the Respondent-State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 22, 2022

P.C.:

1. Heard the learned counsel for the parties.
2. In view of the nature of controversy, the petition is taken up for final disposal at the stage of admission itself.
3. The petitioner/accused assails the order passed by the Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai on an application (Exhibit 82) in C.C. No. 1075/SS/2015 whereby the accused had sought leave to examine himself as a defence witness and two more witnesses to bolster up his defence. The said application was rejected by the learned Magistrate by an order dated 3rd January, 2022. The accused carried the said order in revision before the Court of Sessions in Criminal Revision Application No. 68 of 2022. By the impugned judgment and order

dated 10th February, 2022, the learned Sessions Judge rejected the revision and affirmed the order passed by the learned Magistrate. Being further aggrieved, the accused has invoked the writ jurisdiction.

4. The accused is facing trial for the offence punishable under section 138 of Negotiable Instruments Act. Initially, after the evidence of the complainant was closed, the statement of accused under section 313 of Code of Criminal Procedure came to be recorded on 5th October, 2019. The matter was posted for defence evidence. Admittedly, the accused did not lead evidence despite the matter having been adjourned on more than a couple of occasions. In the meanwhile, the respondent/complainant filed an application under section 311 of the Code. A bank official was recalled and further examined. Thereafter, the additional statement of the advocate for the accused was recorded on 30th November, 2021. The matter came to be posted on 16th December, 2021 for defence evidence. On that day, the accused did not appear. The learned Magistrate was persuaded to close the defence evidence and adjourn the matter for final argument. Thereafter, the petitioner preferred application (Exhibit 82) seeking permission to lead defence evidence. By order dated 3rd January, 2022 the said application came to be rejected.

5. Undoubtedly, the record indicates that the accused had not been diligent in leading evidence after his statement under section 313 of the Code was recorded. The accused got further opportunity to lead defence evidence after the respondent/complainant recalled one of the witnesses and pursuant thereto an additional statement of the accused came to be recorded under section 313 of the Code. The said statement indicates that the advocate for the accused, whose statement was recorded in lieu of the accused, had stated that he would consult the accused on the aspect as to whether the accused intended to lead defence evidence.

6. In the aforesaid backdrop, when the matter was posted on the next date I.e. 16th December, 2021, an efficacious opportunity ought to have been provided to the accused to lead defence evidence. It seems, on the very day, despite granting exemption from appearance to the accused, the defence evidence was closed by the learned Magistrate. What weighed with the learned Magistrate was the past lapses on the part of the accused. However, when the accused got an opportunity to lead evidence, post 313 statement, a reasonable accommodation ought to have been granted.

7. It is trite that the accused ought get a reasonable opportunity to lead evidence so as to ensure that there is a fair trial. This assumes significance in cases where statutory presumption operate

against the accused. In the circumstances, it would be expedient to allow the accused an opportunity to lead evidence lest his right to fair trial is jeopardized. The accused can be put to terms as to the time within which the evidence is to be led. This would address the concern of expeditious disposal of the case as well.

Hence, the following order.

ORDER

- 1] Petition stands allowed.
- 2] The order passed by the learned Magistrate on 3rd January, 2022 an application (Exhibit 82) in C.C.No.1075/SS/2015 and the order passed by the learned Sessions Judge in Cri. Revision Application No. 68 of 2022 are quashed and set aside.
- 3] The application (Exhibit 82) stands allowed.
- 4] The accused is permitted to lead defence evidence. However, the accused shall file affidavit of his evidence and that of the named witnesses, in any event on or before 30th April, 2022.
- 5] The parties shall appear before the learned Magistrate on 25th April, 2022, the scheduled date, and the petitioner shall inform the day on which the petitioner would lead evidence.
- 6] It is made clear that, in any event, the date of leading evidence by the accused shall not be beyond 30th April, 2022.

(N. J. JAMADAR, J.)