

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1447 OF 2022**

Dande Jewellers Pvt. Ltd. & Anr.

..Petitioner

Versus

Hirachandra Pukhraj Gulecha HUF & Anr.

..Respondents

Mr. Pawan Mali i/b. Anant Vadgaonkar for Petitioner.

Mr. Jatin P. Shah a/w. S. Munj a/w. Tushar B. Patel a/w. Shraddha Kamble for Respondent No.1.

Smt. Veera shinde, APP for State/Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.**

**DATE : 25<sup>th</sup> AUGUST 2022**

**PC :**

1. This is an application challenging the order dated 20/04/2022 whereby the trial Court had rejected the petitioner's application for examination of his defence witness. The evidence was closed and the matter was fixed for arguments.

2. Heard Shri. Pawan Mali, learned counsel for the Petitioner, Shri. Jatin Shah, learned counsel for the Respondent No.1 and Smt. Veera Shinde, learned APP for the State.

3. The petitioner is facing trial U/s.138 of the Negotiable

Instrument Act vide Case No.8174-SS-2019 in the Court of Additional Chief Metropolitan Magistrate at Sewree, Mumbai. The subject matter pertains to dishonour of a cheque dated 24/01/2019 for an amount of Rs.10,41,998/-. The complaint was filed on 07/05/2019. Thereafter the affidavit in the form of examination in chief was tendered in the year 2020. The complainant was cross-examined on behalf of the petitioner/accused on 04/12/2021. Thereafter the evidence of the complainant was closed and statement of the petitioner/accused was recorded U/s.313 of Cr.p.c. on 18/02/2022. The date was subsequently corrected to 19/03/2022. After that the case was posted for 11/04/2022. On that date an application for adjournment was made. On 11/04/2022, it was mentioned that the defence witness is in some difficulty and the matter be kept on 30/04/2022. Learned Magistrate posted the matter on 20/04/2022. On that date, again an application for adjournment was made citing a reason that the petitioner was not well and the defence witness was also in bad health and therefore, could not attend the court on that date. Learned Magistrate, that time did

not accede to the reasons of the petitioner and following order was passed, which is impugned in this petition.

“Since 19/03/2022 case is for defence witness. Today is third date. Neither witness appears nor accused applied for issuance of summons to witness. Nothing is on record to corroborate the reason mentioned in application. Hence, rejected. Defence evidence closed. Fix the matter for arguments”

4. Learned counsel for the Petitioner submitted that, in the interest of justice, opportunity be given to the petitioner to lead defence evidence by examining defence witness. He categorically stated that, he has only one defence witness to examine. He further states that, on any date fixed by this Court he shall ensure that the witness is present before the trial court and his evidence is completed on that day itself; subject to right of cross examination by the complainant.

5. Learned counsel for the original complainant/first informant opposed this application. He submitted that, this is nothing but an attempt to prolong the matter. He has not even

mentioned the name of any defence witness; either during cross-examination or during his own examination U/s.313 of Cr.p.c., therefore, the petitioner may not be permitted to examine any defence witness. He also pointed out that the Petitioner on 30/04/2022 had mentioned that, he was trying to settle the dispute, but no proposal is given by the petitioner.

6. I have considered these arguments. It is of course desirable that the trial is concluded as early as possible and for that purpose co-operation of both sides is necessary. On 11/04/2022 the petitioner had mentioned before the Court that his defence witness was in difficulty and he had sought an adjournment till 30/04/2022. Even after this request, the matter was posted to 20/04/2022. Therefore, at the first instance itself the petitioner had mentioned that till 30/04/2022 it was difficult to examine the defence witness. On 20/04/2022, the trial court did not give any further opportunity and directed closing of defence evidence.

7. In my opinion, in the interest of justice, the

petitioner/accused deserves a reasonable opportunity to examine his defence witness because this is the only time when he has any opportunity to establish his defence. The statement made by learned counsel for the Petitioner is taken into consideration that, he shall not take any steps which are likely to prolong the matter. He is willing to examine the defence witness on the date fixed by the Court.

8. In this view of the matter, in the interest of justice, I am inclined to grant opportunity to the petitioner to examine his defence witness. However, fixing of date for examination of defence witness is at discretion of the trial court, because that Court can adjust its board, so that, on that particular date sufficient time is available for examination of defence witness.

9. Hence, the order:

### ORDER

- i) Both the parties shall appear before the trial Court on 03/09/2022, as both learned counsel state that next date of hearing is fixed on

03/09/2022.

ii) On that date, the trial Court shall fix a date as per his convenience for examining defence witness.

iii) On the date fixed by the trial Court, the petitioner shall ensure that his witness is present on that date and his evidence is recorded. No further adjournment shall be granted by the trial Court for the purpose of recording of evidence of defence witness.

iv) Considering the observations made by the trial Court and since the complainant is put to some inconvenience, cost of Rs.10000/- (Rupees Ten Thousand only) is imposed on the petitioner, which he shall deposit before the trial Court on 03/09/2022.

v) The Writ Petition is disposed of.

**(SARANG V. KOTWAL, J.)**