

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

**CRIMINAL WRIT PETITION NO.2031 OF 2022
AND
CRIMINAL WRIT PETITION NO.2032 OF 2022
AND
CRIMINAL WRIT PETITION NO.2038 OF 2022**

Prabhakar Baburao Thorat ...Petitioner
Versus
The State of Maharashtra And Anr. ...Respondents

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Mr. Rizwan Merchant i/by M/s.Rizwan Merchant & Associates for petitioner in all matters.

Mr. Jatin Shah a/w D.M.Galani, Advocate for Respondent No.2. in all matters.

Mr. A.R.Patil, APP for State in W.P. No.2031 of 2022.

Mr. A.D.Kamkhedkar, APP for State in W.P. No.2032 of 2022.

Mr. S.R.Agarkar, APP for State in W.P. No.2038 of 2022.

**CORAM : PRAKASH D. NAIK, J.
Date : 20th JUNE, 2022.**

PC.

1. The petitioner in all these petitions has challenged order dated 28th February, 2022 and 4th May, 2022 passed by the learned Metropolitan Magistrate, 20th Court Mazgaon, Mumbai.

2. The petitioner is facing prosecution for an offence under Section 138 of Negotiable Instruments Act (for short 'NI Act'). The petitions relates to orders passed in three different complaints pending before the aforesaid Court viz. C.C. No.1126/SS/2021; C.C.

No. 1125/SS/2021 and C.C. No.2149/SS/2021. Since, common issue is involved in all the proceedings petitions are disposed off by common order.

3. Process was issued against the accused. The complainant filed affidavit in lieu of examination chief on 18th November, 2021. The case was due for cross-examination on 6th January, 2022. The accused filed criminal revision application before Sessions Court challenging order of process. The Advocate for the Accused filed an application for adjournment on the ground that his revision application challenging the order of process is pending before the Sessions Court. The case was adjourned to 9th February, 2022, with observing that if no order granting stay of the proceedings is passed by the Sessions Court, the Advocate for the accused will have to proceed with the cross-examination on the next date. On 9th February, 2022 and 28th February, 2022 cross-examination was not conducted. On 28th February, 2022, learned Magistrate rejected application for adjournment and passed order of “No cross-examination and case to proceed further”. Thereafter, the petitioner preferred application for recall of witness for cross-examination. The

application was opposed by complainant by filing 'say'. The learned Magistrate by order dated 4th May, 2022 rejected the application on the ground that granting such relief would amount to review of order. The Court relied upon decision of this Court in the case of Shankar Lotlikar V/s Pundalik Venktesh Verlekar (Criminal Writ Petition No.253 of 2019 dated 9th March, 2020)

5. The petitioner's contention is that revision application was filed before Sessions Court challenging order of process and order under 143-A of Negotiable Instruments Act. The said application was pending before Sessions Court on 28th February, 2022. The application for adjournment ought not have been rejected. If the petitioner is not allowed to cross-examine complainant, grave prejudice would be caused to the defence of petitioner.

6. Learned Advocate for the Respondent submit that sufficient opportunity was given to the petitioner to cross-examine the complainant. In spite of adjournments the witness was not cross-examined. The trial Court was constrained to pass order of no cross. Since the trial Court had passed order of no cross, the question of recalling witness for cross-examination would amount to review of

previous order. The learned Magistrate has rightly rejected the application.

7. The affidavit of evidence in cross-examination in chief has been submitted by the complainant. The cross-examination of the witness was due. The learned Magistrate apparently rejected the application for adjournment and passed the order dated 28th February, 2022, rejecting the application and directions of no cross. The Court has taken into consideration the fact that the complainant is a senior citizen and he could not wait repeatedly. Court also noted that granting prayer for recall of witness for cross-examination would amount to review of previous order of closing cross-examination.

7. Considering the fact that the petitioner is now willing to cross-examine the complainant, an opportunity could be given to him. If the order dated 28th February, 2022, is not set aside serious prejudice would be caused to defence of petitioner. In the interest of justice both orders order can be set aside.

8. Hence, I pass the following order:-

ORDER

- (i) Criminal Writ Petition Nos.2031 of 2022, 2032 of 2022 and 2038 of 2022 are allowed and disposed of;
- (ii) The order dated 28th February 2022 and 4th May 2022 passed by learned Metropolitan Magistrate, 20th Court Mazgaon, Mumbai, are set aside;
- (iii) Petitioner is directed to cross-examine the complainant/witness. The cross examination may be conducted on 6th July 2022 and thereafter if necessary;
- (iv) The trial is expedited. The Trial Court shall make an endeavour to conclude the trial within four months

(PRAKASH D. NAIK, J.)