

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5073 OF 2021

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Mr. Shesachandra Radheshyam Tiwari ...Petitioner
Vs.
1. State of Maharashtra
& Anr. ... Respondents

Mr. Aditya Sharma i/b Mrs. Sudha Dwivedi for petitioner.
Ms. Anamika Malhotra, APP for respondent No.1-State.
Mr. Hemant Kenjalkar a/w. Mr. Sandeep Gurav and Ms. Minal Kamble for respondent No.2.

CORAM : N. J. JAMADAR, J.
DATE : 27th APRIL, 2022

P.C.:

1. The challenge in this petition is to an order dated 7th February 2020, passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Application No.472 of 2019 whereby, the said revision application came to be dismissed and the order passed by the learned Metropolitan Magistrate, 58th Court, Bandra Mumbai, rejecting the application [Exh.12(B)] in C.C. No. **2628/SS/2017** to recall the complainant for cross-examination, was affirmed by the learned Additional Sessions Judge.
2. The petitioner-accused is prosecuted for the offence punishable under section 138 of the Negotiable Instruments Act,

1881. The petitioner committed default in cross-examining the complainant. After noting that adjournments were sought by the petitioner on a number of occasions, the learned Magistrate had passed an order of no cross-examination. By an order dated 8th August 2018, the complainant was recalled for cross-examination. It seems there was further default on the part of the petitioner to cross-examine the complainant and the applications for adjournment were rejected.

3. Eventually, again no-cross order was passed against the accused. By an application (Exh.12), the accused prayed for permission to cross-examine the complainant, by setting aside 'no cross' order.

4. Noting the manner in which the accused proceeded with the cross-examination of the complainant, the default on the part of the accused and the attendant circumstances, the learned Magistrate was persuaded to reject the application.

5. The revisional Court did not find a case to interfere in exercise of revisionary jurisdiction.

6. The petitioner is, thus, before this Court invoking the writ jurisdiction.

7. Heard the learned counsel for the petitioner, the learned APP

for the State and the learned counsel for respondent No.2.

8. The learned counsel for the petitioner made an endeavour to explain away the situation. The fact, however, remains that the petitioner-accused did not diligently cross-examine the complainant, over a period of time. The proceeding was required to be adjourned on a quite number of occasions.

9. The matter is, however, required to be appreciated from the perspective of a providing an effective opportunity of hearing to the accused. Without delving into the reasons which weighed with the learned Magistrate in declining to exercise the discretion in favour of the accused and justifiability of those reasons, it may be expedient, in the interest of justice, to afford the petitioner-accused one more opportunity to cross-examine the complainant so as to ensure that there is a fair trial. However, the petitioner-accused is required to be put to terms so that the liberty to cross-examine is not further abused and the trial is delayed.

10. In the circumstances of the case, the order passed by the learned Magistrate, on an application at Exh.12 in C.C. No.2628/SS/2017, dated 20th March 2019 and the order passed by the learned Additional Sessions Judge, dated 7th February 2020, in Criminal Revision Application No. 472 of 2019 stand quashed and

set aside.

11. The application (Exh.12) for recalling the complainant for cross-examination stands allowed, subject to the following conditions :

(i) The petitioner-accused shall pay costs of Rs.20,000/- to the complainant, within a period of one week from today.

(ii) The petitioner-accused shall cross-examine the complainant on the scheduled date before the learned Magistrate, i.e., on 14th June 2022, without fail.

(iii) In the event, the trial does not proceed on 14th June 2022 for any reason, other than non-appearance of the accused or his counsel before the trial court, the cross-examination of the complainant shall be completed on the next date which may be fixed in the matter.

(iv) The petitioner-accused shall not seek any adjournment for cross-examination of the complainant.

(v) If the petitioner-accused fails to conduct the

cross-examination of the complainant on 14th June 2022 or any subsequent date, as may be fixed by the learned Magistrate, the right of the accused to cross-examine the complainant shall stand forfeited.

12. The application stands disposed.

(N. J. JAMADAR, J.)