

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

CRIMINAL WRIT PETITION NO. 3097 OF 2022

Prabhakar Baburao Thorat

Applicant

Versus

Suneel Dattatraya Mogre HUF and Anr.

Respondents

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Mr. Rizwan Merchant a/w Ms. Vinita Dandekar, Advocate for the petitioner.

Mr. Jatin P. Shah a/w Ms. Snehankita Munj a/w Ms. Sharadhha Kamble Advocate for Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 23rd SEPTEMBER, 2022

PC :

1. Leave to amend to correct the name of Respondent No.1. Leave is granted.

2. The applicant is facing prosecution for offence punishable under Section 138 of the Negotiable Instruments Act. The applicant is aggrieved by order dated 04.08.2022 and 18.08.2022 passed by learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai in C.C. No. 1126/SS/2021.

3. Vide order dated 04.08.2022, the Court of learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai

dispensed with further cross-examination of the complainant below Exhibit-13 and both the sides directed to note and do the needful for timely completion of trial in view of directions of the High Court. Vide order dated 18.08.2022, the learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai rejected the application seeking permission of cross examination of the complainant in the light of earlier order dated 04.08.2022.

4. The petitioner had filed Criminal Writ Petition Nos. 2031 of 2022, 2032 of 2021 and 2038 of 2022 before this Court for setting aside the order dated 28.02.2022 and 04.05.2022 passed by learned Metropolitan Magistrate 20th Court, Sewree, Mumbai in C.C. Nos. 1126/SS/2021, 1125/SS/2021 and 2149/SS/2021. This Court vide order dated 20.06.2022 quashed and set aside the order dated 28.02.2022 and 04.05.2022 and the petitioner was directed to cross-examine the complainant/witness. The trial was expedited with a request to trial Court to conclude the trial within four months.

5. Learned advocate for the petitioner submitted that pursuant aforesaid order, the petitioner conducted the cross-examination of complainant on 12.07.2022,

13.07.2022, 14.07.2022, 16.07.2022, 19.07.2022, 29.07.2022, 30.07.2022, 01.08.2022 and 03.08.2022. The petitioner has been conducting cross-examination of the complainant mostly on day to day basis or alternate day basis. On 20.07.2022, the advocate for petitioner filed leave note from 21.07.2022 to 27.07.2022 before the High Court which was communicated to the trial Court by filing adjournment application. Hence, cross-examination of complainant was not conducted from 20.07.2022 to 28.07.2022. On 04.08.2022, the Criminal Application No. 254 of 2022 was filed before High Court for transfer of case No. 1830/SS/2021 pending before Learned Metropolitan Magistrate, 54th Court, Sewree, Mumbai on the ground that the said case also emanates out of transactions between accused and complainant in respect of alleged cheque issued by the accused in favour of complainant's HUF account was also listed before this Court. Case No.1126/SS/2021 be also listed before the trial Court for hearing on 04.08.2022. Hence, advocate for petitioner filed application for adjournment requesting for adjourning the case to 05.08.2022. The respondent filed application for closing the cross examination of PW-1. The junior advocate appearing for petitioner filed his hand written say. The learned

Magistrate by order dated 04.08.2022 dispensed with cross-examination of the complainant. On 05.08.2022, the petitioner filed application Exhibit-64 seeking permission to allow cross-examination of complainant. The complainant filed reply dated 10.08.2022 and the case was adjourned to 18.08.2022 for passing order on Exhibit-64. On 18.08.2022, the learned Metropolitan Magistrate rejected application at Exhibit-64 filed by petitioner. Case was adjourned to 30.08.2022. It is submitted that there was no deliberate delay in proceedings with cross-examination. The impugned orders passed by Court of learned Metropolitan Magistrate may be set aside.

6. Mr. Shah, learned advocate appearing for respondent/complainant submitted that the case before the trial Court has been expedited by this Court. Criminal Application No. 254 of 2022 was listed before this Court low on board. It was possible for advocate for petitioner to appear before the trial Court and proceed with the cross-examination in the first Session. The trial Court waited for the presence of advocate for the petitioner. Case was kept back. However, the advocate did not appear. The case is expedited by this Court. The trial Court was constrained to pass the order of

refusal of adjournment and dispensing the cross examination. There is no infirmity in the order passed by Court below. The second application was not maintainable in view of order dated 04.08.2022. There is no illegality in order dated 18.08.2022. The petitioner has been delaying the proceedings.

7. It is true that cases has been expedited by this Court. It is noted that the cross-examination of the complainant is being conducted by advocate for the accused on several dates of hearing. It is also noted that vide earlier order of this Court, the petitioner was permitted to cross-examine the complainant. Considering the fact that the advocate for petitioner has conducted the cross-examination and could not remain present on 04.08.2022, adjournment application was preferred by junior advocate before the trial Court has been rejected and the cross-examination was closed. The Subsequent application for seeking permission to cross-examine the complainant is also rejected. It is evident that the petitioner is interested in cross-examining the complainant. Considering the factual aspects of this matter, the petition will have to be allowed by permitting petitioner to cross-examine the complainant. In the interest

of justice and considering the fact that prejudice will be caused to the defence of petitioner. The prayers sought in this petition are required to be granted. Hence, I pass the following order:-

ORDER

- (i) Criminal Writ Petition No. 3097 of 2022 is allowed.
- (ii) Impugned orders dated 04.08.2022 and 18.08.2022 passed by Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai in C.C. No. 1126/SS/2021 are set aside.
- (iii) The petitioner shall appear before the trial Court on 4th October, 2022 and proceed with the cross-examination of complainant.
- (iv) The petitioner shall co-operate with the trial Court for expeditious disposal of the case.
- (v) Parties shall not take unnecessary adjournments.
- (vi) Writ Petition is disposed off accordingly.

(PRAKASH D. NAIK, J.)