

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

CRIMINAL WRIT PETITION NO. 3518 OF 2018

Bharatbhai Jasdan ...Petitioner
Versus
The State Of Maharashtra And Anr. ...Respondents

....

Mr. Tejas Mane i/by Mr. Harshvardhan Salgaokar, Advocate for the
Petitioner.

Mr. S. R. Agarkar, APP for the Respondent No.1 – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 9th JUNE, 2022.

PER COURT:

1. The Petitioner has challenged the order dated 17th July, 2018 passed by the learned J.M.F.C., Thane. The Petitioner is prosecuted for offence under Section 138 of Negotiable Instruments Act. The complaint is pending in the Court of learned J.M.F.C. at Thane. According to complaint, the accused had represents that, he has purchased a land at Revenue village, Vasai, Dist. Thane. He was in need of money. He approached complainant and offered him to purchase part of plot of land at village Juchandra, Taluka Vasai. The accused showed MOU between him and landlord. The complainant gave Rs.11,00,000/- in cash to accused as token money. Accused did not execute any document in favour of complainant. Accused issued cheque of Rs.5,50,000/- dated 5th

February, 2011 and Cheque of Rs. 5,50,000/- dated 16th February, 2011 in favour of another partner Vinay Dube. Cheque dated 5th February, 2011 was dishonoured. The brother of respondent No.2 filed another complaint for offence under Section 138 of Negotiable Instruments Act.

2. It is the case of the Petitioner that, the cross examination in respect to SCC No.7295 of 2011 was conducted by Advocate for accused on 26th March, 2015. The cross was not exhaustive. The Petitioner could not instruct his Advocate to recall witness. The Petitioner changed his Advocate. Thereafter application was preferred for recall of witness. Application was rejected. The cross examination was not exhaustive and prejudice is caused to Petitioner.

3. Learned counsel for the petitioner further submitted that the trial Court has committed an error in rejecting the application. The Petitioner subsequently realized that the cross examination was not effective. Hence, the application was preferred before the trial Court for recalling the said witness for further cross examination. The grave prejudice would be caused to the defence witnesses if the relief sought by the petitioner was not granted.

4. This petition is pending since, 2018. The complaint was filed in 2011. The process has been issued for offence

punishable under Section 138 of Negotiable Instruments Act. Affidavit of examination-in-chief was filed by complainant on 16th September, 2013. The complainant was cross examined by the defence Advocate on 26th March, 2015. The application for recall of CW-1 (Complainant) was preferred on 5th July, 2018. The contents of the said application mentions that after the cross examination it was revealed by the accused to the advocate for the defence that certain important aspect remained to be confronted to the complainant. The ground for recalling the witness for cross examination is vague. The said application was preferred belatedly. The trial Court has rightly rejected the application. The trial Court has observed that, cross was conducted in full length and completed vide Exhibit-19. Hence, the application would amount to filling up lacuna of cross already conducted. The cross more than five year old. Hence, no case is made out for interfering in the impugned order dated 17th July, 2018.

ORDER

Writ Petition No.3518 of 2018 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)