

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

CRIMINAL WRIT PETITION NO. 4590 OF 2021

Dr Nayan Mali

...Petitioner

Versus

Dr Batras Positive Health
Clinic Pvt. Ltd. And Anr

...Respondents

....

Hemen S. Thakkar, Advocate for the Petitioner.

Mr. Sunil D'Souza advocate for respondent No.1.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 22nd AUGUST, 2022

PC :

1. The petitioner is aggrieved by order dated 17.09.2019 below exhibit 63 in CC No.3641/SS/2013 pending before the Court of Learned Metropolitan Magistrate, 63rd Court at Andheri, Mumbai.

2. In the order dated 29.11.2021 it is observed that the petitioner is deliberately avoiding to cross-examine the complainant's witness simply to protract the trial. However, in paragraph No.4 of the said order it is indicated that costs could be imposed upon the petitioner for allowing him to proceed with the cross-examination.

3. Learned counsel for respondent/complainant submits that 'No Cross' order was passed in the year 2019. Despite several opportunities were given to the petitioner, the advocate for the petitioner did not proceed with the cross. The petitioner has proceeded to file an application before the trial Court on 05.02.2020 for recalling the witness for conducting cross-examination. The said application is pending.

4. Considering the aforesaid circumstances and in the interest of justice, the petitioner can be permitted to proceed with the cross-examination of the complainant on condition that the petitioner shall pay costs of Rs. 15,000/- to the respondent/complainant within a period of two weeks from today.

ORDER

(i) Order dated 17.09.2019 below exhibit-63 in CC No. 3641/SS/2013 passed by learned Metropolitan Magistrate 63rd Court Andheri Mumbai directing 'No Cross' is set aside.

(ii) The petitioner or his advocate shall proceed with the cross-examination before the next date on 01.10.2022.

(iii) The petitioner shall not delay the trial.

(iv) The cross-examination should commence on

01.10.2022 and should be concluded as early as possible.

(v) The petitioner pay costs of Rs. 15,000/- to the complainant within two weeks from today. Payment of cost is condition precedent to proceed with the cross examination.

(vi) In the event, the costs is not paid, the petitioner shall not be allowed to cross-examine the witness.

(vii) Writ Petition stands disposed of.

(PRAKASH D. NAIK, J.)