

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH : NAGPUR.**

**CRIMINAL WRIT PETITION NO. 28/2022**  
(Mr. Sayyad Ayaz Ali S/o. Magdum Ali Vs. Mohammed Fazal Hazi  
Yunus Haji Aziz.)

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

Court's or Judge's Order

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Mr. R. R. Vyas, Advocate for petitioner.  
Mr. R. Kadu, Advocate for respondent No. 1.

**CORAM :- AVINASH G. GHAROTE, J.**

**DATED :- 25.03.2022**

Heard learned counsel for the petitioner and  
learned counsel for the respondent.

2. The judgment dated 08.10.2020 has been passed by the learned Magistrate in the proceedings under Section 138 of the Negotiable Instruments Act convicting and sentencing him to undergo simple imprisonment for 6 months and further pay compensation of Rs. 18 lakhs, in two months in default, simple imprisonment for 6 months. In appeal, an application was filed under Section 319 read with Section 311 of the Criminal Procedure Code for permission to examine witnesses, which came to be rejected by the learned

Appellate Court by impugned order dated 13.12.2021.

Learned counsel for the petitioner submits that though in his statement under Section 313 of the Criminal Procedure Code, in answer to question No. 27, it has been stated by the petitioner that he wanted to examine that bank official, post official and notary as his witnesses, reasonable opportunity has not been afforded, which vitiated the judgment dated 08.10.2020 and therefore, when this opportunity has been sought to be availed by filing an application under Section 391 read with Section 311 of the Criminal Procedure Code before the Appellate Court, the same also has been denied. He submits that the impugned order needs to be quashed and set aside and the application at Exh. 15 needs to be allowed.

3. Learned counsel for the respondent vehemently opposed the petition and submits that ample opportunity was granted to the applicant before the Trial Court. Thereafter, to demonstrate the attitude of procrastination on part of the applicant for which he invited my attention to para 5 of the impugned order.

It is correct to say, that in answer to question No. 27, in the statement under Section 313 of the Criminal Procedure Code, the petitioner had stated that he wanted to examine the bank officer, post official and notary, however, it is material to note that the statement was recorded on 16.11.2016, pursuant to which the applicant has examined himself and his cross examination was concluded on 11.12.2017. Thereafter, the applicant was granted various opportunities to examine additional witnesses, as stated by him, in his statement under Section 313 of the Criminal Procedure Code, however, that opportunity was not availed by him, as a result of which, by way of order at Exh. 1 dated 15.01.2018, the learned Magistrate had closed his evidence. The impugned order further records that even thereafter upon the application of the applicant, further opportunities were granted to examine the witnesses twice, which however was not done. Even thereafter a last opportunity was given to the applicant on 13.01.2020, in spite of which, the applicant failed to take any step to lead evidence of his witnesses, as a

result of which, on 15.01.2020, by an order below Exh. 1, Exh. 121 and Exh 122, the side of the applicant was closed and the judgment was therefore rendered by the learned Magistrate on 8.10.2022. It is thus apparent that from 31.10.2017 till 08.10.2022 for a period of 4 years, inspite of granting several opportunities, the petitioner failed to take any step to examine witnesses on his behalf. In my opinion, the aforesaid period of 4 years was more than sufficient time, available to the petitioner in case witnesses were required to be examined, which was not done inspite of opportunity being afforded, considering which, I do not find any infirmity in the impugned order. The opportunities granted to the petitioner, from time to time were sufficient. Hence, there is no merit in the petition and accordingly the same is dismissed.

(AVINASH G. GHAROTE, J)

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signed by  
JITENDRA  
BHARAT  
GOHANE  
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