

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL APPLICATION (APL) NO.103 OF 2019

Shri Mohan s/o Vitthalrao Khandvekar
.Vs.

Kashinath s/o Ankush Borkar and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr V.K. Kolte, Advocate for the applicant.
Mr. Amit Chutke, APP for the State.

CORAM : G.A. SANAP, J.
DATE : NOVEMBER 29, 2022.

This Criminal Application is filed by the applicant being aggrieved by the order dated 23.11.2018, passed by the learned Judicial Magistrate First Class and Special Court for trial of an offences under Section 138 of the Negotiable Instruments Act, 1881 at Nagpur.

2. It is stated that after completion of examination-in-chief of complainant the accused through his advocate commenced the cross examination and by asking two questions in the cross examination, the cross of the witness was deferred. The complainant at that point of time realized that certain relevant facts remained to be brought on record and therefore, he made an application at Exh. 37 and prayed for

permission to conduct re-examination. The application was opposed by the accused persons on the ground that application is pre-mature and not maintainable as per the law. Learned Magistrate after considering the stage of the matter and the fact that the cross examination of the complainant was not over at that point of time found that the application was not maintainable.

3. I have heard learned Advocate for the applicant and learned APP for the State.

4. Today the matter is listed with office note that the service to the respondent No.1 has not been effected. In my view considering the nature of the order impugned in this application, it would not be necessary to hear respondent No.1.

5. It is to be noted that the application made by the complainant in the midst of his cross examination by the respondent No.1 was not at all maintainable. The provision of Section 138 of the Evidence Act, 1872 provides for the order of examination of the witnesses. Perusal of this Section 138 would show that the re-examination can be directed to seek the explanation of matters referred to in cross examination. It is therefore, seen that in order to make prayer before the Court for re

examination of the witness the completion of a cross examination is a sine qua non. Un-disputedly in this case, the cross examination is not over. After completion of the examination-in-chief, by asking two questions in the cross examination it was deferred. In the facts and circumstances, in my view, the application was devoid of merits.

6. It is to be noted that in order to make a prayer for re-examination, the complainant would be required to wait till completion of cross examination. It is to be noted that the prayer for re-examination cannot be granted routinely and as a matter of course. Before granting the re-examination the party seeking the same is required to satisfy that ambiguity has been crept in the cross examination and to explain the ambiguity for the purpose of decision of matter according to law, the ambiguity is required to be explained.

7. In the facts and circumstances, therefore, this application being devoid of merit deserves to be dismissed. Accordingly the Criminal Application is dismissed.

8. It is made clear that after completion of cross examination of the complainant by the accused, he

would be at liberty to apply before the learned Magistrate for re examination of the complainant. Learned Magistrate as and when, such application for re-examination is made, after completion of the cross examination, shall decide the said application in accordance with law.

9. The Criminal Application stands disposed of.

(G. A. SANAP, J.)

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