

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.266/2022

Shri Ajay s/o Badrinarayan Soni
...Versus...
Shri Satpalsingh s/o Kasturilal Arora

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

Court's or Judge's orders

Shri G.B. Hemke, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.
DATE : 05/05/2022

1. Heard Shri Hemke, learned Counsel for the petitioner.
2. The present petition challenges the order dated 20/01/2022, passed by the learned Trial Court below Exh.98 on an application for setting aside the order dated 24/11/2021, on which date, though the witness was present, however, since the Counsel for the applicant had filed an application for adjournment the same being rejected, 'no cross' order was passed.
3. Shri Hemke, learned Counsel for the petitioner submits that no opportunity has been granted to cross-examine the applicant, for which purpose, the application at Exh.98 was filed, which also has been rejected

by the impugned order, which is required to be quashed and set aside and Exh.98 be allowed.

4. It would be pertinent to note that the proceedings relate to Section 138 of the Negotiable Instruments Act involving a cheque of amount of Rs.33,00,000/- claimed to have been given by the petitioner to the respondent. On an earlier occasion, when the complainant was examined and the Counsel for accused, had failed to cross-examine him, an application at Exh.74 was filed, seeking permission to recall the complainant and permit further cross, which was dated 29/01/2020. By an order dated 04/03/2020, the learned Trial Court had granted permission, subject to the cost of Rs.5,000/- to be paid to the complainant, within seven days and the complainant was directed to remain present for further cross-examination. It appears from the record of the petition that nothing has happened thereafter and no cross-examination was conducted nor the cost was paid. On 07/10/2021, there was a change of Counsel who sought a date, as a result of which, the matter was posted on 23/10/2021, on which date since the Presiding Officer was on leave, the matter was fixed on 30/10/2021, on which date, further examination in chief of PW-2 was conducted. The Counsel for the accused/petitioner had filed an application for adjournment at Exh.93, which was allowed, and the matter thereafter was posted on 24/11/2021, on which date also, an application for adjournment was filed, which came to be

rejected as the witness was present and 'no cross' order was passed. By an application dated 06/12/2021 at Exh.98 the order dated 24/11/2022, by which, the matter was directed to proceed ahead on account of 'no cross' order, was sought to be set aside, which has been rejected by the impugned order.

5. It is apparent that the direction to pay the costs of Rs.5,000/-, as contained in the order dated 04/03/2020 has not been complied with within the time of seven days, as indicated therein, as a result of which, the right of the accused/petitioner to cross-examine the complainant stood forfeited. On 30/10/2021 though PW-2 was examined and further opportunity was granted by allowing Exh.93 and posting the matter on 24/11/2021, an inability to cross-examine was expressed by filing an application for adjournment, which was rejected. The impugned order categorically demonstrates the failure to pay the cost, directed as per order dated 04/03/2020 and the subsequent attempts at procrastination, in spite of having granted opportunities, considering which, I am not inclined to interfere in the impugned order. The criminal writ petition is, therefore, without any merit and is accordingly dismissed.

(AVINASH G. GHAROTE, J.)