

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

CRIMINAL APPLICATION [APL] No. 644/2022.

Ashish Anandrao Thakre,
Age 44 years, Occupation
Business, resident of Sindhi (Meghe),
Wardha, Taluq and District
Wardha.

... **APPLICANT.**

VERSUS

Anand Manoharrao Timande,
Aged 57 years, Occupation -
Business, resident of Hind Nagar,
Rashtabhasha Road, Sindhi (Meghe)
Wardha, Taluq and District
Wardha.

... **NON-APPLICANT.**

Mr. P.S. Kadam, Advocate for the Applicant
Mr.O. Bhope, Advocate for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JUNE 27, 2022.

ORAL JUDGMENT :

Heard. **Admit.** Considering the controversy involved in the
matter and by consent of the learned Counsel for the parties,

2

Criminal Application is taken up for final disposal at the stage of admission.

2. Short challenge in this application by the applicant /accused is to the rejection of his urge for examining defence witness in the proceeding initiated under Section 138 of the Negotiable Instruments Act. The non-applicant / complainant led evidence in the trial and the statement of the applicant/accused in terms of Section 313 of the Code of Criminal Procedure was recorded by the learned Magistrate on 05.02.2020. On the following day, the applicant has applied for adjournment to examine defence witness. Time was granted till next date i.e. 07.02.2020, on which once again the applicant applied for time by stating that witness has gone out of station, and thus, the matter be kept after 22.02.2020. However, the learned Magistrate kept the matter on 10.02.2020, on which date the applicant again urged for adjournment which was refused. Revision was filed against the said order, which also came to be rejected.

3

3. The principal question is about examination of defence witness by the accused. Other side resisted this application by contending that despite sufficient opportunity, the applicant has not examined the defence witness. Moreover it is contended that the applicant was convicted in three similar type of crimes and therefore, he is well aware of the proceedings under Section 138 of the Negotiable Instruments Act.

4. I do not deem it necessary to go into the factual aspect. I feel that the applicant/accused shall get an opportunity to put up his defence. However, at the same time care should be taken that under the guise of examining defence witness, he shall not cause unnecessary delay in the matter.

5. On query, the applicant has informed that he desires to examine three witnesses namely [1] Akhil Ashok Kapat, [2] Satish Manohar Chaudhari and [3] Branch Manager, Corporation Bank, Wardha. So far as the first two witnesses are concerned, it is argued that they relates to the business transaction, therefore, it is necessary

4

to examine them in defence. As regards to third witness i.e. Branch Manager, Corporation Bank is concerned, no justification is given, as well as, it is not brought to the notice as to what was the defence raised by the applicant in the trial Court for permitting said witness.

6. In the circumstances, it is desirable to permit the applicant to examine two witness namely - [1] Akhil Ashok Kapat and [2] Satish Manohar Chaudhari in his defence. Certainly said exercise has to be completed within a time bound manner. In view of that, following order is passed.

ORDER

- [i] Criminal Application is allowed.
- [ii] The impugned order dated 18.04.2022 passed by the Additional Sessions Judge, Wardha in Criminal Revision No.4/2020 is hereby quashed and set aside.
- [iii] The applicant is permitted to examine [1] Akhil Ashok Kapat and [2] Satish Manohar Chaudhari as defence witness before the learned Magistrate. The applicant shall

5

keep both the witness present before the trial Court on 11.07.2022 for their examination. Failure on the part of the applicant to bring the abovesaid witness on specified date will amount to loosing his right to examine the defence witness.

- [iv] The learned Magistrate shall examine both the witness on 11.07.2022, and in case of time constraints, on or before 15.07.2022, as per convenience.
- [v] Both parties undertakes to appear before the learned Magistrate on 11.07.2022 without any prior notice.

JUDGE