

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

CRIMINAL WRIT PETITION NO.625 OF 2022

Petitioner : **Shri Murlidhar s/o Tulshiramji Mankar,**
 Aged about 65 years, Occu. Private,
 R/o Talpura, Bhandara Road, Pardi, Nagpur.

– Versus –

Respondent : **Raju s/o Vitthal Hargude,**
 Aged about 44 years, Occu. Private,
 R/o Plot No.45, Adarsh Nagar, Umred Road,
 Nagpur.

Ms. J.S. Nagalwade, Advocate for the Petitioner
Mr. N.G. Jetha, Advocate for the Respondent

CORAM : **VINAY JOSHI, J.**
DATE : **23rd SEPTEMBER, 2022.**

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent of both sides.

02] The petitioner is an accused in SCC No.13485/2018 for the offence punishable under Section 138 of the Negotiable Instruments Act. The petitioner has challenged the order dated 04/08/2022, by which the learned Magistrate has rejected the petitioner's application seeking permission to cross-examine the witness. Some personal inconveniences have been put on

record to contend that the petitioner has not deliberately avoided to face the proceedings.

03] The other side strongly objected the petition by contenting that only with a view to delay the proceedings, the petitioner has used dilatory tactics before the trial Court. The learned Counsel appearing for the respondent took me through the impugned order to contend that the learned Magistrate has noted several instances to demonstrate as to how the petitioner was negligent and avoided to go on with the matter.

04] It is informed that after the petitioner's evidence, he has examined two another witnesses and presently the matter is fixed on 28th September, 2022 for cross-examination of the petitioner's third witness. It is evident from the record that the petitioner has filed his examination-in-chief on 22/08/2019 and thereafter twice 'no cross order' was passed. The impugned order indicates that in the meantime, the petitioner did not attend the proceedings, which caused in securing his presence by issuing non-bailable warrant. The impugned order itself speaks as to how the petitioner has avoided to cross-examine the witness.

05] Be that as it may, the evidence of the complainant has not been closed. The trial without cross-examination is to be avoided unless

exceptional circumstances emerge. The right of cross-examination carries importance in criminal proceedings since this is the only mean for the accused to test the veracity and truthfulness of the complainant's evidence. The petitioner's learned Counsel submits that the petitioner would cross-examine the complainant on the next scheduled date i.e. on 28th of this month. Only with a view to give an opportunity to the petitioner and to uphold the principle of fair trial, I deem it appropriate to give one more opportunity with a rider.

06] In view of that, the following order is passed :

- i. The petition is allowed subject to payment of costs of Rs.5,000/- (Rupees Five Thousand Only) to be paid directly to the complainant on or before 28th September, 2022.
- ii. The petitioner shall cross-examine the complainant on 28th September, 2022 or on the date fixed by the trial Court in its discretion, failing which right to cross-examine is deemed to be forfeited.
- iii. The petition stand disposed accordingly. Rule is made absolute in the above terms.

(VINAY JOSHI, J.)

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