

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

CRIMINAL WRIT PETITION NO.687 OF 2022

Laxmichand Dyandev Kolhe

Vs.

Gunwanta alias Balanbhau Ramdasji Bawankar

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

Court's or Judge's orders.

Ms S.H. Diwan, Advocate for petitioner.

Shri Pavan Gabhane, Advocate for respondent.

CORAM : G.A. SANAP, J.

DATE : NOVEMBER 24, 2022.

Heard learned advocates for the parties. Perused the record and proceedings.

2. It is seen that the criminal case is now posted for arguments after recording the examination of the accused under Section 313 of the Code of Criminal Procedure. Learned advocate for the petitioner submits that the case is adjourned to 29.11.2022. Learned advocate for the petitioner/accused had refused to cross-examine the witness i.e. complainant on the ground that she was not fully prepared. The order of 'no cross' was passed on 19.07.2022. It is seen that no application was made after this order before the learned Magistrate seeking leave to allow the petitioner/accused to cross-examine the witness. It is to be noted that if such an application had been made learned Magistrate taking into consideration the facts and

circumstances obtained on the record would have decided the said application. It is therefore seen that without taking recourse to proper available remedy, the petitioner has come before this Court and prayed for setting aside 'no cross' order. In my view, this petition cannot be entertained and as such, it has to be dismissed.

3. It is to be noted that on the date of issuance of notice on 03.10.2022 this Court directed the petitioner/accused to deposit ₹1,00,000/- in the trial Court within two weeks. The order has not been complied and, therefore, vide order dated 09.11.2022 this Court vacated the stay granted to the proceedings pending before the learned Magistrate. The petitioner had an opportunity to establish his bonafide before this Court by complying with the order.

4. Needless to state that even after disposal of this petition, the petitioner/accused can make an application before the learned Magistrate seeking permission to cross-examine the witnesses. Liberty is granted to the petitioner to make an application before the learned Magistrate if so advised. If such an application is made, the learned Magistrate shall decide the same on its own merits and in accordance with the law. If it is proposed by the petitioner to make such application it shall be made on 25.11.2022.

5. In view of the above, the petition stands disposed of.

6. It is made clear that the Court has not expressed any opinion with regard to the merits of the matter so the learned Magistrate shall dispose of the application without getting influenced by any observations made in this order.

JUDGE

Wagh