

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

CRIMINAL WRIT PETITION NO.659 OF 2022

Ravishankar s/o Chandrabhan Gupta
Aged about 50 years, Occ: Business,
R/o Near Sapna Cloth Market,
Rameshwari Sq. Nagpur

... PETITIONER
(Orig. Accused)

---VERSUS---

Narayan s/o Manohar Patki
Aged about 69 years, Occ: Retired,
R/o 102, Bhide Road, Sitabuldi, Nagpur.

...RESPONDENT
(Orig. Complainant)

Shri Y.R. Sonkusare, Advocate for petitioner.
Shri N.R. Bhishikar, Advocate for respondent.

CORAM : G.A. SANAP, J.
DATED : NOVEMBER 24, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally at the admission stage with the consent of learned advocates for the parties.

2. The petitioner is an accused in Summary Criminal Case No.10006/2017, which is filed under Section 138 of the Negotiable Instruments Act. The complainant adduced his evidence. The petitioner-accused was absent and therefore the learned Magistrate

was constrained to pass an order as 'no cross' on 21.02.2022. After this, the matter proceeded further. The statement of the petitioner-accused under Section 313 of the Code of Criminal Procedure came to be recorded. The petitioner made an application for setting aside the order of 'no cross' and permission to cross-examine the complainant. Learned Magistrate on 21.02.2022 rejected the said application. This order is impugned in this petition.

3. I have heard learned advocate for the petitioner and learned advocate for the respondent. Perused the record and proceedings.

4. The record and proceedings clearly indicate that there was serious lapse on the part of the petitioner. The present situation has been invited by him due to serious lapses committed by him. The learned advocate submitted that if the petitioner is not granted an opportunity to challenge the evidence by conducting cross-examination, he would be visited with serious consequences, for the proved offence. The learned advocate submitted that the interest of justice would be met if the petitioner is allowed to cross-examine.

5. Learned advocate for the respondent submitted that this is the second time the cross of the petitioner was treated as closed in

his absence. Learned advocate submitted that on the first occasion learned Magistrate was pleased to set aside the no cross order. The learned advocate further submitted that the serious lapses committed by the petitioner and his conduct do not justify the relief.

6. On going through the record, I am satisfied that there are serious lapses on the part of the petitioner. It is pointed out that now the statement of the petitioner under Section 313 has been recorded and the complaint is adjourned for recording the defence evidence of the petitioner-accused. It is to be noted that if the evidence remained unchallenged and uncontroverted then in that event in case of the proof of the offence the petitioner can be visited with the order of substantive sentence. In my view, in such a matter the pragmatic view is required to be taken. The view which subserves the cause of justice in all respect needs to be adopted. It is true that there was a mistake on the part of the petitioner however due to this mistake the order rejecting his prayer to allow him to cross-examine the witness would be disproportionate to the mistake and lapses committed by him. In my view, the interest of justice would be met if he is granted an opportunity to cross-examine the respondent

subject to moderate costs. In view of this position, I pass the following order:

ORDER

- i. The order rejecting the application for grant of the permission to cross-examine dated 21.02.2022 is set aside.
- ii. The application made by the petitioner-accused seeking permission to cross-examine the witness is granted. However, in the facts and circumstances, the petitioner-accused shall pay the costs of ₹15,000/- to the respondent-complainant.
- iii. The petitioner-accused shall appear before the learned Magistrate on 30.11.2022 and pay the costs of ₹15,000/- to the respondent/complainant. If there is a failure on the part of the petitioner to pay the costs of ₹15,000/- on 30.11.2022, the earlier order dated 21.02.2022 passed by the learned Magistrate rejecting the application shall stand restored.
- iv. The petitioner-accused and respondent-complainant shall remain present before the learned Magistrate on 30.11.2022 at 11:00 am. If costs is paid on 30.11.2022 by the petitioner-accused then it shall be given directly before the Court to the respondent-complainant.

- v. It is made clear that the petitioner-accused shall conduct the cross-examination in one session on 01.12.2022.
- vi. The petition stands disposed of with above terms.

JUDGE

Wagh