

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.681 OF 2023

**GANESH KARBHARI SHRIRAM
VERSUS
VAIBHAV NANDKUMAR TARKUNDE**

Ms. Prathiba Suryawanshi, Advocate h/f Ms. M. v. Narwade, Advocate for the petitioner

Mr. M. B. Ubale, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 5th SEPTEMBER, 2023

P.C. :-

1. This petition takes exception to order dated 20/12/2022 passed by the Jt. CJSD, Shrigonda, Dist. Ahmednagar in S.C.C. No. 1069/2016.
2. The petitioner is the complainant in SCC No. 1069/2016 for the offence punishable under Section 138 of the Negotiable Instruments Act. He filed affidavit of evidence at Exhibit 38. After filing of the said affidavit the matter was posted for his cross examination by defence. It is subsequently it is realized by the petitioner that there was typographical error in the examination in chief filed before the Trial Court. Hence application Exhibit 66 was filed seeking permission to lead further evidence and to explain typing mistakes occurred in the filing of the affidavit. This application was opposed by the respondent herein contending that there is no provision of additional examination in chief.

3. Learned Trial Court has accepted the contention of the respondent/accused and rejected application. It is held therein that it is open for the complainant to re-examine himself. It does not stand to any justification that even before commencement of cross examination further examination is sought to be recorded, to explain the typographical error, which is rejected. Had it been a situation that while giving oral evidence before the Court, at later point of time, any witness realises to have made inadvertent statement, there could be no reason to deny him to give such explanation. It is always open for other side to cross examine the witness on entire evidence recorded. No prejudice will be caused to the accused if the complainant is permitted to explain error committed in the affidavit in lieu of examination in chief. There is no purpose to call upon witness to first undergo cross examination and then to reexamine himself. Order cannot therefore sustain. Hence, petition stands allowed in terms of prayer clause 'A'. Application Exhibit 66 is allowed.

(R. M. JOSHI, J.)

ssp