



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1651 OF 2023

A.hameed A.kareem

...Petitioner

VERSUS

Pramod Vishwanath Patil

...Respondent

...
Mr. D. S. Mali, Advocate for the Petitioner.

...

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 29, 2023

PER COURT :

1. Learned Counsel for the Petitioner has filed affidavit of service. Same is taken on record and marked 'X' for identification.

2. This Petition takes exception to the order dated 09.10.2023 passed by learned Additional Chief Judicial Magistrate, Omerga below Exh. 108 in SCC No. 614/2017 whereby application filed by accused for seeking permission to cross examine witness no. 4 — Hanmant Devidas Shetgar of the complainant.

3. Learned Counsel for the Petitioner/accused in SCC No. 614/2017 submits that due to the absence of his advocate on 15.06.2023 the accused was unable to

effectively cross-examine the witness no. 4 of the complainant. It is submitted that for non representation of the lawyer, prejudice and irreparable loss has been caused to him. According to him, the said witness is relevant for the decision of the case.

4. Respondent though duly served, failed to appear. This indicates that Respondent has no inclination to oppose the Petition.

5. From record it is clear that witness no. 4 — Hanmant Devidas Shetgar had filed his affidavit of evidence on 30.08.2022 and thereafter he was available for cross-examination but the accused and his Counsel have failed to cross-examine him. Hence, cross-examination of this witness was closed. This indicates that even prior to passing of impugned order, opportunities were given to the accused to cross-examine this witness which is not availed by him. This indicates that learned trial Court has extended fair opportunities to the accused to defend himself.

6. Be that as it may, it is a right of the accused to get represented by a lawyer and cross-

examination of the witness is essential part of his defence. Hence, only to meet ends of justice, this Court is inclined to extend one more opportunity to the Petitioner which could be subject to substantial cost payable to the witness.

7. In view of above, Petition is allowed. Impugned order dated 09.10.2023 passed by learned Additional Chief Judicial Magistrate, Omerga below Exh. 108 in SCC No. 614/2017 is set aside. The accused is permitted to cross-examine witness no. 4 – Hanmant Devidas Shetgar on payment of Rs. 10,000/- (Rupees Ten Thousand Only) to the witness. Learned trial Court to ensure that amount is paid to the witness before he is permitted to be cross-examined by the Advocate of the accused. Learned trial Court also to ensure presence of this witness before the Court as early as possible. No adjournment on whatsoever count shall be allowed to the accused. If the witness is present and accused or counsel for accused are absent or fail to cross-examine him for whatsoever reason, it is open for the Court to close evidence of this witness.

(R. M. JOSHI, J.)