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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.684 OF 2020

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Rahul Ratnakar Makhre

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Balasaheb R. Deshmukh for the petitioner.

Mr. A.R. Patil, APP for respondent no.1/State.

Ms. Priyanka Gupta for respondent no.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 17, 2023

PC.:

- 1.** The challenge in this writ petition is to the order dated 28th November 2019 closing evidence of the complainant.
- 2.** The petitioner is original complainant who filed Complaint No.329 of 2009 before Judicial Magistrate First Class, Indapur. On 4th July 2017, the Trial Court issued process against respondent no.2. From 31st January 2017 till the date of passing of the order, the petitioner examined in all six witnesses. The witness summons of seventh witness was served on the authority but the report received by the Magistrate indicates that name of concerned person from the police station was not mentioned. Said report was received on 20th November 2019.
- 3.** The Magistrate thereafter by the impugned order observed that sufficient opportunities are given to the complainant and the

complaint is pending from 2009.

4. On perusal of the record, I am satisfied that the learned Magistrate was not justified in passing order of closure of evidence of the complainant. There is no finding recorded by the Magistrate that the complainant was trying to delay the matter. In absence of such finding, the impugned order could not have been passed. It is informed that now the complaint is fixed for arguments.

5. Despite the stage, the petitioner has made out a case for granting permission to lead evidence as from the record I find no material to show that the petitioner was trying to delay the matter. The impugned order, therefore, cannot be sustained. Hence, following order:

a) The impugned order dated 28th November 2019 in Complaint No.329 of 2009 pending before Judicial Magistrate First Class, Indapur is quashed and set aside;

b) Parties shall appear before the Magistrate on 10th April 2023 when the petitioner shall file list of witnesses which the petitioner desire to examine;

c) The Magistrate shall allow such application and permit the petitioner to examine witnesses as mentioned in the list. The trial will start from the stage of examination of the witnesses of the complainant.

6. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)