

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

CRIMINAL WRIT PETITION NO.1379 OF 2023

Mangesh Harishchandra Sawant

.... Petitioner

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Gaurav G. Nankar, Advocate for Petitioner.
- Mr. A. R. Patil, APP for the State/Respondent No.1.
- Mr. Bhalchandra Shinde, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th JULY, 2023

P.C. :

1. This matter is taken out of turn because learned counsel for the Respondent No.2 on instructions of the Respondent No.2, who is present in the Court, fairly submitted that he has no objection for setting aside the impugned order.

2. Considering this statement, I have heard the parties.

3. The Petitioner has challenged the order dated

16/07/2022 passed by the 5th Joint Civil Judgt, S.D. & Additional Chief Judicial Magistrate, Kalyan, Dist-Thane, in S.C.C.No.1129/2016. By the impugned order, the learned Judge rejected the Petitioner's application for setting aside the order of 'no cross' passed below Ex.22 on 17/11/2018. Both the learned counsel submitted that the complainant's evidence was over. Thereafter, the Petitioner was asked to cross-examine the complainant. However, the cross-examination was not conducted on many occasions. The Petitioner was asked to lead his evidence. Even that was not done and after many years the application below Ex.50 was filed for permitting the cross-examination of the complainant. The reason given in the application was that he had undergone bypass surgery and was advised rest for five months. After that, there was spread of Covid-19 pandemic. All these submissions were considered by the learned Trial Judge and they were not accepted; resulting in dismissal of the application.

4. Since learned counsel for the Respondent No.2 has

very fairly consented for setting aside that order, in the interest of justice that order can be set aside. However, at the same time, it has to be noted that there is clear attempt on part of the Petitioner to prolong the matter. This has to be taken care of by issuing directions in that behalf. The Petitioner has deposited Rs.10,000/- in this Court as directed by the order dated 19/04/2023.

5. Considering this situation, in the interest of justice the Petitioner can be permitted to cross-examine the complainant. However, the trial will have to be concluded in a time bound manner.

6. Hence, the following order :

ORDER

- (i) The order dated 16/07/2022 passed by the 5th Joint Civil Judgt, S.D. & Additional Chief Judicial Magistrate, Kalyan, Dist-Thane, in S.C.C.No.1129/2016, is set aside.

- (ii) The Petitioner is permitted to cross-examine the complainant and his witnesses.
- (iii) The learned Trial Judge is requested to conclude the trial within a period of four months from today.
- (iv) The Petitioner has deposited Rs.10,000/- in this Court. The Respondent No.2 is permitted to withdraw that amount.
- (v) The Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)