

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

CRIMINAL WRIT PETITION NO.1643 OF 2023

Anurag Anand Khemka

.....Petitioner

Versus

Tony Nemnath Jatia
and another

.... Respondents

Mr. Ghanshyam Upadhyaya, Advocate a/w. Vijay Jha i/b.
Law Juris for the Petitioner.

Mr. Jugal Kanani, Advocate for the Respondent No.1.

Mr. N.B. Patil, APP for the Respondent-State.

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CORAM : SARANG V. KOTWAL, J.

DATE : 27th JULY, 2023

P.C. :

1. The Petitioner is the original accused in the case pending before the learned Magistrate for commission of the offence punishable under Section 138 of the Negotiable Instruments Act. As of today, the stage of the trial is that the statement of the accused-petitioner is recorded under

Section 313 of Cr.PC.. At this stage, the Petitioner-original accused made an application before the learned trial Judge for issuing summons to the following five witnesses, to be examined as defence witnesses :

- “1. Mr. Pradeep Nair,
2. Mr. Sanchit Gaurav,
3. Mrs. Sangeeta Toony Jatia,
4. Branch Manage of IDBI Bank, &
5. Mr. Karam Hussain Khan.”

2. Learned trial Judge rejected the said application mainly on the ground that the said application appeared to be filed as an afterthought. There were other reasons mentioned in the said order.

3. At this stage, I am not entering into the correctness of the reasoning because the learned counsel for the original complainant-Respondent No.1 has consented for allowing the prayer for examination of the three out of the five witnesses. Just to complete the record, it must be recorded that the order passed by the learned Magistrate

rejecting the Petitioner's application for examination of five defence witnesses was challenged before the Court of Sessions in Revision Application which was also dismissed. Thereafter the Petitioner approached this Court.

4. Without entering into the merits and the reasonings recorded in the orders passed by both the Courts, it is necessary to record that the learned counsel for the complainant–original Respondent No.1 has no objection if the following witnesses are examined as the defence witnesses. They are as follows : –

- “1. Mr. Pradeep Nair,
2. Mr. Sanchit Gaurav, &
3. Mrs. Sangeeta Toony Jatia.”

5. On this concession, learned counsel for the Petitioner does not insist on the examination of the witness Nos.4 & 5 i.e. the Branch Manager of IDBI Bank and Mr. Karam Hussain Khan.

6. Since both the parties agree to this arrangement,

the trial Court can be directed to permit examination of the above three witnesses as the defence witnesses. It is made clear that this order is passed in the Court in presence of the learned counsel for both the parties who have made submissions on the basis of the instructions given to them by their respective parties. The Petitioner is present in the Court.

7. Hence, the following order :

:: O R D E R ::

- i. The order dated 22.12.2022 passed by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai as well as the order dated 2.2.2023 passed by the Additional Sessions Judge, Sessions Court, Greater Mumbai in Criminal Revision Application No.11/2023 are set aside;
- ii. The Petitioner is permitted to examine (1) Mr. Pradeep Nair, (2) Mr. Sanchit Gaurav and (3) Mrs. Sangeeta Toony Jatia as his defence witnesses.

- iii. Since the trial is pending from the year 2012, the trial is expedited and learned trial Judge is requested to complete and conclude the trial within a period of four months from today.
- iv. Both the parties shall cooperate with the disposal of the trial within that period.
- v. With these observations, the application is disposed of. It is made clear that all the contentions of both the parties on merits of the matter are specifically left open.
- vi. Writ Petition is disposed of accordingly.

(SARANG V. KOTWAL, J.)