

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

CRIMINAL WRIT PETITION NO. 2501 of 2022

Anil Narayan Gangurde

..Petitioner

Versus

Prasad Hiranman Pawar & Anr.

..Respondents

Mr. Narayan Bubna for Petitioner.

Mr. A. R. Patil, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 10 JULY 2023

PC :

1. The Petitioner has challenged the order dated 17/03/2022 passed by the Additional Chief Judicial Magistrate, Malegaon, below Exhibit-58 in Summary Criminal Case No.1578 of 2019. The Petitioner is the original complainant.

2. Heard Shri. Narayan Bubna, learned counsel for the Petitioner and Shri. A. R. Patil, learned APP for the State/Respondent No.2.

3. The Petitioner has filed a complaint against the Respondent No.1 for dishonour of cheque for the amount of Rs.16 lakhs. Learned counsel for the Petitioner submitted that the Accused/Respondent No.1 herein has been continuously violating

the orders passed by the Trial Court. Learned Magistrate had directed the accused to deposit 20% amount of the cheque amount as per Section 143-A of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act'). The said amount was not deposited by the accused. After that, a pursis was filed, signed by both the parties and their advocates mentioning that the accused was willing to refund the amount of Rs.16 lakhs to the Petitioner. In spite of that pursis filed in the Court, the Respondent No.1 did not take any steps in that behalf.

4. Thereafter the matter proceeded and the Petitioner's evidence was taken on record in the form of affidavit to be treated as his examination in chief. The examination in chief was conducted for exhibiting the documents on 13/01/2022. Thereafter the matter was adjourned to 18/01/2022. On 18/01/2022 also an application was made on behalf of the accused/Respondent No.1 mentioning that the matter be adjourned to 21/01/2022 and on that date, the accused would refund the entire amount of the cheque. Even thereafter the amount of cheque was not paid; instead, an application was made

below Exhibit-58 for setting aside the order of 'No cross'. That application below Exhibit-58 was allowed. Learned Magistrate passed an order permitting the accused to conduct cross-examination of the complainant/petitioner at the cost of Rs.2000/-. This particular order dated 17/03/2022 is under challenge in this petition.

5. As far as non compliance of the directions of the Court U/s.143-A of the N.I. Act is concerned, the Petitioner has remedy to take steps under sub section 5 of Section 143-A of the N.I.Act. He can certainly avail of that statutory remedy. As far as pursis filed by the accused showing his willingness to refund the entire amount of the cheque is concerned, the Petitioner is always at liberty to take steps in accordance with law for misleading the Court and not complying with his undertaking. Apart from that, the Petitioner can also cross-examine the accused/Respondent No.1 in that behalf. It does appear that the accused had made the offer to make the payment of the entire amount at least on two occasions, but he has not honored his own commitment. All these factors can be taken into consideration at the appropriate stage by

the learned Trial Judge. However, I find no reason to interfere with the impugned order dated 17/03/2022 whereby learned Magistrate had permitted the accused to conduct the cross-examination of the Petitioner/complainant on payment of cost of Rs.2000/-. Learned Magistrate has observed that, it would be in the interest of principles of natural justice that the accused was permitted to cross-examine the complainant. He also observed that, if the application of the accused for permitting cross-examination was rejected, there would be further delay in the entire proceeding. These reasons cannot be faulted with. Therefore, I am not inclined to interfere with the impugned order. Hence, no relief as claimed by the Petitioner in the present petition regarding setting aside the impugned order can be granted.

6. With the above observations, the petition is disposed of.

7. However, considering the background, the Trial Court is directed to complete the trial before him within a period of six months from today.

(SARANG V. KOTWAL, J.)