

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

CRIMINAL WRIT PETITION NO.2398 OF 2023

Jagannath Shravan Patil

.... Petitioner

versus

Mithilesh Chittaranjan Palekar & Anr.

.... Respondents

.....

- Mr. Dilip Shinde a/w K. C. Kumbhar, Advocate for Petitioner.
- Mr. Sachin Gite, Advocate for Respondent No.1.
- Mr. Ajay Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th OCTOBER, 2023

P.C. :

1. Heard Mr. Dilip Shinde, learned counsel for the Petitioner, Mr. Sachin Gite, learned counsel for the Respondent No.1 and Mr. Ajay Patil, learned APP for the State.

2. The Applicant is aggrieved by the orders passed below Ex.17 and Ex.30 whereby he was denied an opportunity to cross-examine the complainant (Respondent No.1 herein).

3. The Applicant is facing trial vide SCC No.2415 of 2020 before the CJM, Nashik for commission of offence punishable u/s 138 of the Negotiable Instruments Act. The complainant was present in the Court on 25/04/2023 for the purpose of submitting himself for cross-examination. The Applicant and his advocate were present. But the cross-examination was not conducted. In the first impugned order passed below Ex.17, the learned Additional Chief Metropolitan Magistrate forfeited the Applicant's right to conduct the cross-examination of the Respondent No.1/original complainant. On that very date, an application was made by the Applicant at Ex.30 mentioning that when the matter was called out, the Applicant was trying to contact his advocate through his mobile phone and therefore he could not take steps to cross-examine the complainant immediately. He prayed for setting aside that order of forfeiture of his right to cross-examine the complainant. On application below Ex.30, the learned Trial Judge ordered that the application would be considered after recording the statement of the accused. Being aggrieved by these two orders of the learned Trial Judge, the Applicant approached this Court.

4. Learned counsel for the Respondent No.1 opposed this application and submitted that the Applicant deliberately did not conduct the cross-examination and therefore leniency should not be shown to him.
5. I have perused the impugned orders and I have considered the submissions made by both the learned counsel. The Applicant had immediately on that very date had preferred application for setting aside the order denying him right to cross-examine. Thus there was no delay on his part and he had shown willingness to cross-examine the complainant. In that situation, the learned Trial Judge ought to have allowed the application to cross-examine the complainant. Unnecessarily the order was passed, that the application for setting aside the earlier order denying him cross-examination, would be considered after recording the statement of the Applicant.
6. It is necessary to lead the entire evidence before recording the statement of the Applicant. Therefore, in the

interest of justice and in consonance of the principles of natural justice, it is necessary to set aside both the impugned orders.

7. Hence, the following order :

ORDER

- (i) The order dated 25/04/2023 passed below Ex.17 and order dated 25/04/2023 passed below Ex.30 in SCC No.2415 of 2020 by C.J.M., Nashik are set aside.
- (ii) The Applicant is permitted to cross-examine the Respondent No.1.
- (iii) On the next date before the Trial Court, the Respondent No.1 shall remain present for cross-examination and the learned Trial Judge shall permit the Applicant to conduct the cross-examination.
- (iv) Both the sides shall not take unnecessary adjournment and trial shall be proceeded expeditiously.
- (v) With these observations, the application is disposed of.

(SARANG V. KOTWAL, J.)