

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

CRIMINAL WRIT PETITION NO. 3543 OF 2022

Arvind Sheshmani Mishra

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Ashok Kumar Dubey a/w. Shweta Yadav i/b. SAVJ Law
Solutions for Petitioner.

Mr. A. R. Patil, APP for State/Respondent No.1.

Mr. Piyush Naha i/b. P. D. Jain for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 3 AUGUST 2023

PC :

1. In this petition, the petitioner has challenged the order dated 20/08/2022 passed by the Metropolitan Magistrate, 56th Court, Mazgaon, Mumbai, below Exhibit-86 in C.C.No.4188/SS/2019. The petitioner is the original accused and the Respondent No.1 is the original complainant.

2. Heard Shri. Ashok Kumar Dubey, learned counsel for the petitioner, Shri. Piyush Naha, learned counsel for the Respondent No.2 and Shri. A.R. Patil, learned APP for the State/Respondent.

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3. The stage of the trial is for final arguments. The case of the complainant was that the complainant had supplied cement to the petitioner. According to the complainant, the accused was liable to pay sum of Rs.6,50,379/-. In repayment of that liability, the accused issued a cheque of Rs.6,50,379/- dated 04/01/2019 drawn on the Bank of India, Kalyan branch. The cheque was dishonoured and, therefore, the complaint was filed.

4. The trial proceeded. The complainant led his evidence through his affidavit in the form of examination in chief. He was cross-examined. The cross-examination commenced on 31/07/2019 and it was over on 13/11/2019. After that, the statement of the accused was recorded U/s.313 of the Cr.p.c. The petitioner/accused himself was examined as a defence witness No.1. The petitioner produced the statement of account signed by the bank officials. The statement was produced at Exhibit-47 and 48. After that, the petitioner was cross-examined on behalf of the complainant. That cross-examination was over on 23/01/2020. The Defence Witness No.2 was the Assistant Manager working with Kalburgi cements. His cross-examination was over on

08/12/2021. After that, an application was made by the petitioner on 19/08/2022 for recalling himself i.e. DW.-1. This application was rejected vide the impugned order dated 20/08/2022 passed below Exhibit-86 in the said case.

5. Learned counsel for the petitioner submitted that, in the interest of justice, it was necessary to examine the petitioner again to prove each entry separately to show that the entire amount was returned by the petitioner/accused to the complainant. He submitted that, no prejudice would be caused to the complainant if such course was adopted. He submitted that, since the entire amount was repaid, there was no existing legal liability.

6. Learned counsel for the Respondent No.1/original complainant submitted that the accused was only making an attempt to prolong the matter. He had sufficient opportunity to lead the evidence. He had sufficiently cross-examined the complainant. He had examined himself throughout. He could have produced any documents he wanted. In any case, the bank account statement is already on record. Therefore, there is no necessity for

him to be examined again.

7. I have considered these submissions. The learned Trial Judge has recorded that the petitioner/accused had submitted all the documents in his possession on record in respect of this case. He has also placed the statement of account of the accused from the period from April 2017 to 21/10/2019 at Exhibit-41 showing all the amounts debited and credited between the accused and the complainant. He has taken a defence in his statement U/s.313 of the Cr.p.c. of misuse of the cheque. In this circumstance, re-examination of the accused was not necessary. Learned Trial Judge had noted the dates on which the witnesses were examined.

8. The Application made by the accused for re-calling himself mentions 20 entries between January 2018 to September 2019. Learned counsel for the petitioner submitted before the Court today that, all these entries are part of the bank account statements which are already filed on record during examination in chief of the accused/petitioner. In this view of the matter, I really do not see any reason as to why the petitioner/accused

should be permitted to re-examine himself when he had sufficient opportunity to lead evidence and when all the entries through the bank statement are already on record. The learned Trial Judge was justified in rejecting the application on the same reasoning. The dates mentioned hereinabove indicate that the trial is unnecessarily delayed, though, it is pending only for final arguments. In this view of the matter, I do not see any reason to interfere with the impugned order.

9. Consequently, the writ petition is dismissed.

(SARANG V. KOTWAL, J.)