

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

CRIMINAL APPLICATION NO. 1012 OF 2022

Dudhnath Mataprasad Dubey

..Applicant.

Versus

State of Maharashtra & Anr.

..Respondents

Mr. R. R. Tripathi for Applicant.

Mr. Arfan Sait, APP for State/Respondent No.1.

Mr. Rushit P. Thakkar for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 17 JULY 2023

PC :

1. The Applicant has filed this application for setting aside the order dated 20/08/2022 passed in Criminal Revision Application No.97 of 2022 before the learned Additional Sessions Judge, Thane, arising out of the S.C.C.No.207 of 2017 before the J.M.F.C., Bhiwandi.

2. The Respondent No.2 herein is the original complainant before the learned Magistrate. The applicant is facing the prosecution initiated by the original complainant U/s.138 of the Negotiable Instruments Act, 1881 (for short 'N.I.Act').

3. The case of the complainant is that, he had supplied yarn to the applicant. The applicant did not pay the dues and by way of part payment of the dues, issued a cheque; which was dishonoured and, therefore, the complaint was filed. There were in all four complaints pending simultaneously before the same learned Magistrate. In all these matters, separately, the examination in chief of the complainant, in the form of affidavit, was filed. The applicant, through his advocate, conducted the cross-examination in the S.C.C.No.3618 of 2016 and at the conclusion of the cross-examination, filed a pursis that the said cross-examination should be treated as the cross-examination in all the remaining cases. After the cross-examination was over, the applicant filed an application U/s.311 of the Cr.p.c. for recalling the complainant. It was mentioned in that application that the cross-examination was necessary on the following issues.

- i) The applicant asked the question regarding bills and delivery challans, but the answer regarding the challans was recorded, while the answer given by the complainant in respect of the bills has not come on record.

- ii) There was an agreement executed by the applicant with his tenants for which the original complainant was a witness. The applicant wanted to bring that document on record to show that the parties were knowing each other since before the alleged transaction.

The applicant wanted to ask the questions regarding these two issues.

4. That application was rejected by the learned Magistrate on the ground that, sufficient opportunity was given to the accused/applicant and the accused/applicant can still examine his defence witness and can bring on record the evidence in respect of that particular document. On these reasons the application was rejected. That application was challenged before the Court of Sessions. The Revision application was dismissed.

5. Heard Mr. Tripathi, learned counsel for the Applicant, Mr. Arfan Sait, learned APP for the State and Mr. Rushit Thakkar, learned counsel for the Respondent No.2.

6. The issue involved is very limited. Learned counsel for

the original complainant very fairly submitted that, instead of prolonging the matter, the complainant does not have any objection if the cross-examination is restricted to these two particular issues and production of the alleged agreement which is referred to in the applicant's application U/s.311 of the Cr.p.c. Even otherwise, as per the said application, these were the only issues for which the cross-examination was to be conducted. Therefore, in the interest of justice, instead of wasting more time at this stage, the Trial Court can permit further cross-examination of the complainant restricted only to these issues.

7. Learned counsel for the applicant undertakes to complete the cross-examination only in respect of these issues and that particular document; on the date fixed by the Trial Court for further cross-examination of the complainant. In view of this, the application can be allowed to that extent.

8. Hence, the following order:

ORDER

i) Learned Judicial Magistrate, First Class,

Bhiwandi, shall direct the Respondent No.2/complainant to appear before him so that the accused/applicant herein can cross-examine the complainant only in respect of the aforementioned issues and nothing beyond that.

- ii) The Applicant shall complete the cross-examination only in respect of the aforementioned issues on the very date on which the complainant appear before the Court.
- iii) This further cross-examination can be adopted in the other remaining cases as was done earlier.
- iv) With these directions, the impugned order of the Revisional Court, as well as, of the Trial Court, to that limited extent, are set aside.
- v) The Application is allowed in the aforesaid terms and is disposed of.

(SARANG V. KOTWAL, J.)