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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3783 OF 2022

Mr. Pradeep Ramsajeevan Gupta .. Petitioner

v/s.

The State of Maharashtra And Anr. .. Respondents

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Mr. Ashok Kumar Dubey, i/b. SAVJ Law Solutions, for the Petitioner.

Mr. A.R. Patil, APP, for State.

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CORAM: R.G. AVACHAT, J.

DATE : 27 FEBRUARY 2023.

P.C:-

Heard.

2. The challenge in this writ petition is to the order dated 8 August 2022, passed by the Court of J.M.F.C. (3rd Court), Vashi, rejecting Application (Exhibit 40) for recall of the Respondent/ complainant for further cross-examination.

3. Learned Advocate for the Petitioner would submit that the trial court is making undue haste in proceeding with the case. The case is of the year 2021. The Petitioner has been conducting the matter without taking adjournment. During cross-examination of the

Respondent/complainant, a few disputed facts remained unshaken. The Petitioner then filed handwritten application to recall the complainant, on the very same day. The trial court, however, rejected the same. The Petitioner then moved application under Section 91 of the Code of Criminal Procedure, seeking direction to the Respondent/complainant for production of certain documents. The said application was also rejected. When the matter was posted for the Petitioner's examination under Section 313 of Cr.P.C., the Petitioner requested the trial court to provide the questionnaire for written statement. His oral request was turned down. The Petitioner then filed application on 6 July 2022. The said application was also rejected on 17 August 2022. The Petitioner filed his written statement on 4 August 2022. Certain mistakes have crept in the evidence of the Respondent/complainant. Those need to be rectified. The trial court is not ready to listen.

4. The Petitioner moved the application (Exhibit 40) with a view to further cross-examine the Respondent/complainant so as to bring on record certain documents, the Respondent/complainant was confronted with. In the cross-examination, the relevant issues as to transactions in the year 2019 and income tax returns filed by the complainant, besides complaint lodged by the Petitioner with Kurla Police Station with documents, need to be produced and read in evidence. The Respondent/complainant, therefore, needs to be re-

examined and recalled. According to learned Advocate, it is necessary to rebut the evidence against the Petitioner and clarify the false facts and false grounds made by the Respondent/complainant in his evidence. He, therefore, urged for issuance of notice in his writ petition.

5. It is a case of dishonour of cheque. The Petitioner (accused) do not dispute his signature in the cheque. The Respondent/complainant was extensively cross-examined on behalf of the Petitioner. It has specifically been mentioned in the complaint and even the Respondent/complainant's evidence that statutory demand notice was served on the Petitioner. The Petitioner has not replied the notice. The Respondent/complainant is wholesaler of fruits. As per his case, he had supplied the complainant fruits on credit. His business transactions with the Petitioner commenced since November 2018. The Petitioner was regularly supplied with lemons on credit. The Petitioner was regular in repayment of price. During November 2018 to November 2019, the transaction between the two was worth Rs.15,50,000/-. The Petitioner is said to have issued a cheque for Rs. 6,00,000/- towards outstanding amount of Rs.8,50,000/-. On going through the cross-examination of the Respondent/complainant, it appears that some admissions have been brought on record. The Respondent/complainant has admitted to have had obtained three blank cheques from the Petitioner. The record, however, indicates that

the Respondent/complainant was extensively cross-examined and it is only after the Petitioner filed his written statement, in lieu of his examination under Section 313 Cr.P.C., the application for recall of the Respondent/complainant for further cross-examination was moved. It is true that the Petitioner's earlier such application was turned down. The trial court has observed that only with a view to delay hearing of the case, such application has been moved.

6. According to the Petitioner, he had transactions with the Respondent/complainant for long. It is a case of sale and purchase of fruits on credit. The Petitioner must have been maintaining his own accounts of the dealings with the Respondent/complainant. Nothing prevents him to lead evidence in his defence by producing his own account books and statement of bank account, suggesting him to have paid the Respondent/complainant, amount due.

7. Since the trial court has rejected the application on due exercise of his discretionary power and on appreciation of the material on record, this Court finds no reason even to issue notice in this matter.

8. The petition is, therefore, dismissed.

(R.G. AVACHAT, J.)