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

WRIT PETITION NO.5129 OF 2022

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Nityanandam Damodar Talla

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Rajesh Jain for the petitioner.

Mr. M.G. Patil, APP for respondent No.1/State.

Mr. Siddharth Dustakar for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MAY 4, 2023

PC.:

1. The challenge in this writ petition is to the order passed by the revisional Court thereby setting aside order of the Trial Court dated 13 October 2022 refusing application of the accused to re-cross-examine the complainant.

2. The writ petition arises out of proceedings under Section 138 of the Negotiable Instruments Act, 1881. After recording examination-in-chief of the complainant, accused cross-examined the complainant and his witness. After recording of statement under Section 313, the accused has filed an application for re-cross-examination of the complainant on the ground that due to filing of summary suit, the complainant needs to be cross-examined. The said application has been rejected by the Trial

Court holding that the necessary documents are placed on record. The accused has already examined himself and has filed a pursis stating that he does not want to lead evidence.

3. The accused challenged the order before the revisional Court. The revisional Court by the impugned order allowed the revision holding that the complainant has not denied that he had not filed Commercial Summary Suit in the Civil Court and, therefore, he should get opportunity to lead cross-examination.

4. It is well settled that primary burden to prove legally recoverable liability is on the complainant. Once the complainant has led evidence and the accused has led his evidence in rebuttal, no further re-cross-examination of the complainant is necessary. Therefore, the revisional Court was not justified in allowing the revision which would amount to delay the trial in a complaint under Section 138 of the Negotiable Instruments Act, 1881.

5. For the aforesaid reasons, Rule is made absolute in terms of prayer clauses (b) and (c). No costs.

(AMIT BORKAR, J.)