

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

CRIMINAL WRIT PETITION NO.5045 OF 2018

M/s. Pure and Pristine Solutions

.... Petitioner

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Viraj V. Kadam, Advocate for Petitioner.
- Mr. Arfan Sait, APP for the State/Respondent.
- Ms. Rekha Musale i/b. Mahendra V. Kawchale, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th JUNE, 2023

P.C. :

1. Heard Mr. Viraj V. Kadam, learned counsel for the Petitioner, Ms. Rekha Musale, learned counsel for the Respondent No.2 and Mr. Arfan Sait, learned APP for the State.

2. The Petitioner is the original Appellant in Criminal Appeal No.132 of 2017 before the Additional Sessions Judge, Pune. The said Appeal arises from the Judgment and Order

dated 28/02/2017 passed by 18th Joint, Civil Judge Junior Division and Judicial Magistrate First Class, Pune, passed in SCC No.10497/2014. The Trial Court had convicted the Petitioner for commission of offence punishable u/s 138 of Negotiable Instruments Act and was sentenced to suffer simple imprisonment for one year and to pay compensation of Rs.23 lakhs. This order was challenged before the Court of Sessions at Pune.

3. In that Appeal, an application was preferred by the Petitioner at Ex.29 for remanding back the trial before the learned Magistrate because according to the Petitioner, the important circumstances against him were not put to him u/s 313 of Cr.P.C. after the original complainant i.e. the Respondent No.2 herein was recalled. After his recall further statement of the Petitioner was not recorded causing prejudice to him. This particular application Ex.29 in the said Appeal was rejected by the learned Additional Sessions Judge, Pune, by the impugned order dated 04/10/2018. It was observed that the Appellant

only wanted to prolong the matter and the question No.10 in the statement u/s 313 of Cr.PC was already asked regarding the notice dated 11/04/2014.

4. Learned counsel for the Petitioner submitted that after the additional evidence was recorded when the complainant was recalled, certainly it was duty of the Trial Court to put those questions to the accused/Petitioner. Not giving him an opportunity to explain those circumstances, definitely has caused prejudice to him.
5. Learned counsel for the Respondent No.2 submitted that the case is of the year 2014. The conviction was recorded in 2017. The Appeal itself is pending for more than 6 years. After all this period, setting aside the conviction and remanding the matter back before the Trial Court would cause serious prejudice to the complainant and would not be in the interest of justice. She submitted that the Appellant Court has ample power to put such question as deemed necessary to afford an opportunity to

the accused to explain the circumstances against him. She relied on the observations of the Hon'ble Supreme Court in the case of *Nar Singh, Vs. State of Haryana*, as reported in *(2015)1 Supreme Court Cases 496*.

6. I have considered these submissions. Paragraph 23 of the judgment relied on by the learned counsel for the Respondent No.2 reads thus;

“When such objection as to omission to put the question under Section 313 CrPC is raised by the accused in the appellate court and prejudice is also shown to have been caused to the accused, then what are the courses available to the appellate court? The appellate court may examine the convict or call upon the counsel for the accused to show what explanation the accused has regards the circumstances established against him but not put to him under Section 313 of CrPC and the said answer can be taken into consideration.”

7. In the present case, it is only a matter of putting

circumstances to the Petitioner in respect of the notice dated 13/04/2014.

8. After his recall the Petitioner was examined on on 15/02/2017 and he had merely stated that he was shown a copy of the notice dated 13/04/2014 and the contents of the notice was correct. Only for these two lines it would not be proper to remand the entire matter back to the Trial Court.
9. Learned counsel for the Petitioner submits that the question No.10 in the examination u/s 313 of Cr.P.C. refers to the notice dated 11/04/2014 and the subsequent evidence after recall refers to the notice dated 13/04/2014. Therefore, the specific question regarding the notice dated 13/04/2014 was necessary.
10. Considering these circumstances it is in the interest of the parties to permit the Appellate Court to ask relevant questions in respect of the notice dated 13/04/2014 instead of sending the entire matter back to the Magistrate's Court.

11. Hence, the following order :

ORDER

- (i) The Additional Sessions Judge, Pune, who is deciding Criminal Appeal No.132 of 2017 is at liberty to put such circumstances against the Petitioner/accused to him, under further examination u/s 313 of Cr.P.C. as are deemed fit by him.
- (ii) The Appeal shall be decided at the earliest.
- (iii) With these observations the Petition is disposed of.

(SARANG V. KOTWAL, J.)