



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.393/2023

Rahul Rameshchandra Bajaj Vs. Dinesh Ramjivan Baheti

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Z. A. Haq, Advocate for petitioner.

CORAM : ANIL L. PANSARE, J.

DATE : 31.08.2023

Heard learned counsel for petitioner. None appears for the respondent, though served.

The challenge is to order dated 24.04.2023 passed by learned Additional Sessions Judge, Akola in Criminal Revision No.162/2022, by which the revision application filed by the petitioner has been dismissed and thus the order dated 05.09.2022 passed by the learned Additional Chief Judicial Magistrate, Akola in Summary Criminal Case No.1349/2018 has been upheld.

The learned Additional Chief Judicial Magistrate has, vide impugned order, closed the defence evidence.

Learned counsel for the petitioner submits that the petitioner is an accused before the trial Court and is facing trial for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The case was fixed for defence evidence on 05.09.2022. The petitioner sought adjournment on the count that advocate is not keeping well. Similar such application was filed on previous date, which was rejected. The learned

Magistrate, by the impugned order has stated that despite sufficient opportunity, the petitioner has not tendered evidence. Therefore, the evidence was closed.

Learned counsel for the petitioner, though has rightly argued that the closure of evidence would infringe the rights of accused to put forth his defence, the order indicates that despite opportunity, the petitioner has not tendered the evidence. Maybe that adjournment has been sought on the count that the counsel for the petitioner was not keeping well, however, similar such application was filed, but was rejected and that, therefore, there was no reason for the petitioner to put forth the same reason for the adjournment.

Nonetheless, the fact remains that by the impugned order the right of the petitioner to put forth his defence has been infringed. The learned revisional Court has not considered this vital aspect of infringement of right of the defence and, therefore, committed an error in not reversing the order passed by the learned Magistrate. Learned counsel for the petitioner undertakes that the petitioner will not seek any adjournment and will cooperate with the trial Court as directed.

Since it is found that the rights of the defence have been infringed by the impugned order, the order dated 24.04.2023, passed by learned Additional Sessions Judge, Akola in Criminal Revision No.162/2022 and also order dated 05.09.2022 passed by learned 6th Additional Chief Judicial Magistrate, Akola in Summary Criminal Case No.1349/2018 are set aside, subject to payment of

costs of Rs.10,000/- to be paid by the accused to the complainant within 15 days from today, failing which the order shall stand recalled without further reference to the Court.

The petitioner shall appear before the learned Additional Chief Judicial Magistrate, Akola on 07.09.2023 and thereafter as directed by the Court.

The writ petition is disposed of in the above terms.

(Anil L. Pansare, J.)

Kahale