

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.1311 OF 2022

M/s. Dinesh Enterprises,

Through its proprietor

Shri Dinesh S/o. Hemraj Lodaya,

Aged about 58 Yrs., Occ. : Business,

R/o. Badri Complex, Malkapur,

Tah. Malkapur, Distt. Buldhana.

.... **APPLICANT**

// VERSUS //

Laxmichand S/o. Lalchand Malpani,

Aged about 60 Yrs., Occ. Business,

R/o. Deshpande Galli, Malkapur,

Tah. Malapur, Distt. Buldhana

.... **NON-APPLICANT**

Shri T. S. Deshpande, Advocate for the applicant

Ms Shilpa Tapdiya, Advocate for the non-applicant

CORAM : G. A. SANAP, J.

DATED : 24th FEBRUARY, 2023

ORAL JUDGMENT :

1] Heard.

2] Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

3] In this application, filed under Section 482 of the Code of Criminal Procedure, challenge is to the correctness of the order dated 08.08.2022, passed by the learned Judicial Magistrate First Class, Malkapur below application Exh. 64 in Summary Criminal Complaint No. 324 of 2015. By the said order the learned Magistrate was pleased to reject the application at Exh. 64 made for recalling the complainant for further cross examination.

4] The case in question has been filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881. The evidence of the complainant was over on 17.06.2017. The accused on 10.01.2022 made this application for recalling the complainant for further cross examination. It is stated that certain relevant questions with regard to the filing of the income tax returns by the complainant and disclosure of the amount of transaction in the income tax returns has remained to be asked to the complainant in his cross examination. It is the case of the accused that in order to meet the ends of justice it is necessary to grant him permission to cross examine the complainant on this material aspect.

5] This application was opposed by the complainant. The main contention of the complainant is that this application was nothing but an attempt to delay the trial. The cross examination of the complainant was over on 17.06.2017, i.e. five years prior to this application. The matter is now posted for recording statement of the accused under Section 313 of the Code of Criminal Procedure.

6] Learned Magistrate by reasoned order rejected this application. The learned Magistrate has recorded in his order that the accused has admitted receipt of the amount from the complainant. It is further observed by the learned Magistrate that the sufficient opportunity was granted to the accused to cross examine the complainant. Learned Magistrate found that the grant of the application would result in a prejudice to the complainant.

7] I have heard the learned Advocate for the parties. Perused the record and proceedings.

8] It is seen on perusal of the record that this defence, which is now sought to be put to the complainant in his cross examination by recalling him, was not set out in the reply to the notice. It is to be noted

that after completion of cross examination and that too after change of the Advocate this application was made. In the facts and circumstances, it can be seen that this was nothing but an attempt to delay the trial. Learned Magistrate was right in rejecting the application. The delay in making the application was one of the reasons for rejection of the application. In the facts and circumstances, I do not see any substance in the application.

9] The application accordingly stands **dismissed**.

10] Rule is stands discharged.

(G. A. SANAP, J.)

Namrata