



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

CRIMINAL WRIT PETITION NO.759/2023

Jugalkishor Parashram Atal and anr. .Vs. Jairam Santram Motwani

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

Court's or Judge's orders

Mr. R. J. Mirza, Advocate for petitioners.

CORAM : ANIL L. PANSARE, J.
DATE : 18.10.2023

The challenge is to the order dated 16.04.2022 passed by learned Judicial Magistrate First Class, Akola, rejecting the application filed by the petitioner – accused, recalling the witness for cross-examination.

The application has been rejected, inter alia, on following grounds:

- (i) Cross-examination of respondent – complainant was adjourned on 29.01.2020.
- (ii) Since 27.08.2021 and thereafter on 24.02.2022, both the accused failed to proceed with the matter with due care.
- (iii) On 24.02.2022, although the accused no.1 was present, his counsel was absent despite repeated calls in the second session. Further, the accused no.1 failed to file any application for adjournment to conduct the cross-examination of the complainant.
- (iv) Accused no.2 was also absent on the said date. Accordingly, no cross-examination order came to be passed on 24.02.2022.

The impugned order further indicates that the matter before the trial Court was fixed for statement under Section 313 of the Criminal Procedure Code, 1973.

It is, thus, evident from the order that the petitioners-original accused have taken the Court for a ride. This tactic of delaying/prolonging the trial ought to be dealt with by firm hand, which the trial Court has rightly done. The only issue that bothers this Court is that the petitioners' right to cross-examine the witness has been infringed, though because of their own fault.

In the circumstance, interest of justice will meet if the petitioners are permitted to cross-examine the respondent-complainant but subject to payment of costs of Rs.50,000/- to be paid to the complainant.

I am conscious of the fact, while allowing this application, an opportunity to the respondent ought to have been given. Nonetheless, considering the stage at which the matter is pending before the trial Court and further considering the fact that the right of the petitioners to cross-examine the witness has been jeopardized, I deem it appropriate to allow the application by adequately compensating the respondent for his sufferance. Hence, I pass the following order.

ORDER

(i) The petition is allowed subject to payment of costs of Rs.50,000/- to be deposited by the petitioners jointly or severally with the trial Court, within seven

working days from today. Once deposited, the costs will be paid to the respondent, on filing necessary application.

(ii) If the costs is not deposited within seven working days, the order passed today shall stand recalled without further reference to the Court and the trial Court may proceed further, in accordance with law.

(iii) Impugned order dated 14.08.2023 is quashed and set aside.

The writ petition is disposed of in the above terms.

(Anil L. Pansare, J.)

Kahale