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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.246 OF 2024

Anil Rameshchand Pagariya

PETITIONER

VERSUS

The State of Maharashtra and Another

RESPONDENTS

Mr. Anand I. Deshmukh, Advocate for the petitioner

Mr. A. R. Kale, APP for respondent - State

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th FEBRUARY, 2024

ORDER :

1. Petitioner is aggrieved by the order of rejection of application filed by petitioner under section 311 of the Criminal Procedure Code, for calling witness.

1. Heard learned advocate for the petitioner and learned APP. Perused the memo of petition, annexures and the impugned order.

3. Petitioner is facing proceedings filed under section 138 of the Negotiable Instruments Act, initiated by respondent No.2. Perusal of the impugned order shows that petitioner has not cross-examined the complainant. Non bailable warrant was issued against the petitioner, which was cancelled at his instance. Thereafter his statement under section 313 of the Criminal Procedure Code is recorded, however, petitioner did not

bother to cross-examine the complainant. After recording of his statement, the case was fixed for arguments and petitioner has filed written notes of arguments on 11th August, 2023. The matter was thereafter posted for judgment and at that stage, petitioner filed application Exhibit-52, under section 311 of the Criminal Procedure Code, seeking permission to examine Kishor Manakram Behrani, on the ground that prior to filing of the complainant, there was compromise between petitioner and complainant, in presence of Kishor Manakram Behrani.

4. Trial Court has rightly rejected his application observing that till that date no defence of compromise was raised by petitioner and when the matter is posted for judgment, at this stage, said application is filed, which is not liable to be accepted.

5. Considering the peculiar facts and as petitioner has failed to cross-examine the complainant and put up his defence and since said defence is also not reflected in the written notes of arguments filed by petitioner, no fault can be found with the order passed by the Trial Court.

6. Writ petition being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE