



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 295 OF 2024

SANTOSH SADASHIV GARSULE  
VERSUS  
SANTOSH MAYANJI BAYKAR

Mr. S. E. Shekade, Advocate for the petitioner  
Mr. Atul R. Muley, Advocate for the respondent

CORAM : S. G. MEHARE, J.  
DATE : 18<sup>th</sup> SEPTEMBER, 2024

PER COURT :-

1. Office objections have been removed.
2. Heard the learned counsel for the petitioner and learned counsel for the respondent.
3. The petitioner has impugned the order of no cross-examination of the learned Judicial Magistrate First Class, Ashti in S.C.C. No. 390 of 2018 filed under Section 138 of the Negotiable Instruments Act. The Court passed no cross-examination order on 10<sup>th</sup> October, 2023, for the reason that as usual the advocate for the accused was absent. In fact it is not the duty of the lawyer to attend the Court. It's a duty of the litigant to contact the lawyer and remain present on each and every date of trial.

4. The learned counsel for the petitioner submits that the petitioner has a good case on merit. Hence, opportunity may be granted to cross-examine the complainant.

5. Learned counsel for the respondent-complainant strongly opposed the application. He would submit that the petitioner was careless. He was protracting the trial. The complainant is running after him for Rs.3 Lakhs since 2018. The petitioner is laughing at him saying that what he got by filing the complaint in the Court. The complainant has been harassed. He is also not financially strong. If the Court comes to the conclusion that an opportunity is to be granted heavy cost may be imposed.

6. It's a bad scene of a day that it is very easy to protract the trial blaming the lawyers. The recent survey of the pendency of cases shows that highest number of cases are pending for non availability of lawyers and deep rooted adjournment culture.

7. It was a money matter. The petitioner is succeeded in protracting the trial since 2018. Some time was spent in Covid-2019 pandemic. However, it is now the old history. It seems that the petitioner was taking lightly to the Court and its procedure.

The litigant playing with law must be penalized. Hence, to protect the interest of the accused and in the interest of justice, the petition deserves to be allowed subject to the costs. Hence the order:-

### **ORDER**

- (i) The order impugned before this Court passed in S.C.C. No. 390/2018 stands quashed and set aside subject to the cost of Rs.30,000/- (Rs.Thirty Thousand) to be paid to the complainant before 8<sup>th</sup> November, 2024 before the trial Court.
- (ii) Cost is the condition precedent to exercise the right to cross-examination the witness.
- (iii) If the petitioner fails to pay the cost it would be deemed that he is not interested in the matter and Court shall pass appropriate orders and proceed with the matter ahead.

**(S. G. MEHARE, J.)**

ssp