



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 382 OF 2024

Nandkishor Shamakant Sonar,
Age 48 years, Occu. Business,
R/o. Main Road, Anturli,
Tal. Muktainagar, District Jalgaon

.. Petitioner

Versus

1. Sau. Latabai w/o. Mohan Patil,
Age 46 years, Occu. Agriculturist,
R/o. Plot No.10, Makarand nagar,
Mahabal, Taluka and District Jalgaon

2. State of Maharashtra

.. Respondents

Ms. Rashmi Kulkarni, Advocate along with Ms. Namita Thole,
Advocate for Petitioner;
Ms. S. S. Joshi, A.P.P. for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 10-06-2024

PER COURT :-

1. Heard the learned counsel for the petitioner. Contesting respondent No.1 was served, but did not appear.

2. The facts and circumstances of the case in brief are that the complaint under Section 138 of the Negotiable Instruments Act was filed by respondent No.1. The matter was proceeded. The petitioner cross-examined the witness/complainant. Thereafter, his statement under Section 313 of the Code of Criminal Procedure was recorded. Then, he changed the lawyer. In view thereof the petitioner moved an application below Exhibit-69 to the learned

Judicial Magistrate First Class-2, Jalgaon at 27.07.2022 for recalling the complainant for further cross-examination.

3. Learned counsel for the petitioner submits that the learned Judicial Magistrate First Class, Court No.2, Jalgaon, rejected the application barely on the ground that change of lawyer is not a ground to recall the witness. The petitioner challenged the said order dated 27.07.2022 before the Sessions Court which by order dated 07.12.2023 rejected the revision.

4. Learned counsel for the petitioner submits that in reply to the notice, the petitioner had clarified the situation under which the impugned cheques were misplaced and what action he had taken. However, this factual aspect was not put to the complainant in cross-examination. The cross-examination on these material fact goes to the root of the case. That may help the Court to arrive at a proper conclusion. However, both Courts erred in law in not granting leave to recall only the complainant for further cross-examination.

5. Admittedly, the case is pending since 2017. Present petitioner did not deny the signature on the disputed cheque. However, he wanted to put his case which is already disclosed by way of reply to notice by recalling the complainant by way of cross-examination. It is also not disputed that this application for recalling the complainant for further cross-examination is filed at fag end of the trial.

6. The criminal Court, under Section 311 of the Cr.P.C. has power to recall the witness at any stage of the trial if it appears to the Court that his evidence is essential to the decision of the case.

7. Considering the facts and circumstances of the case and the defence, the petitioner wanted to put the complainant, it would not be unjust to recall the complainant only for cross-examination putting the limited questions to him to cross-examine to the extent of defence of the petitioner as disclosed in his reply notice dated 11.01.2017. It has also not been denied that respondent is striving for recovery of amount since 2017. However, the opportunity to put the defence on merit cannot be denied as it is essential to the decision of the case; In such circumstances, for delay caused in calling the witness, the complainant may be compensated by way of costs. For the ends of justice, the petition may be allowed. Hence, the following order:-

ORDER

- i) Criminal Writ Petition is allowed.
- ii) The order of Judicial Magistrate First Class, Court No.2, Jalgaon, passed below Exhibit-69 in S.C.C.No.655 of 2017 dated 27.07.2022 and order of learned Additional Sessions Judge, Jalgaon, in Criminal Revision Application No.121 of 2022, dated 07.12.2023 stand quashed and set aside.
- iii) Application Exhibit-69 is allowed.

- iv) The complainant be re-called for cross-examination to put the limited questions to her as a defence disclosed in reply notice, subject to costs of Rs.25,000/- (Rs. Twenty Five Thousands Only) to be deposited first in the Court within two weeks from today.
- v) After depositing the costs, the learned Judicial Magistrate First Class, Court No.2, Jalgaon shall recall the complainant for cross-examination for the purpose as mentioned above and the costs be paid to the complainant.
- vi) There shall be no unnecessary adjournment in the matter.

**(S. G. MEHARE)
JUDGE**

rrd