



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

CRIMINAL WRIT PETITION NO. 450 OF 2024

**BHARTI VINOD PATIL
VERSUS
NITIN SUMATILAL SANGHAVI**

....

Mr. A. D. Sonar, Advocate for the Petitioner
Mr. M. R. Wagh, Advocate for the Respondent

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 18.10.2024

PER COURT :-

1. Heard the learned Advocates for both the sides at length.

2. It is not in dispute that the Respondent filed a Summary Criminal Case i.e. S.T.C.C. No.2107 of 2018 against the present Petitioner for the offence punishable under Section 138 of the Negotiable Instrument Act. After service of summons, the Petitioner accused duly appeared in the matter. In order to prove the charge, the Respondent / Complainant filed evidence affidavit and his further examination in chief recorded on 02.08.2018 and

at the request of the present Petitioner, cross of the complainant was deferred till 12.07.2023. On 06.11.2023, the Petitioner filed Application seeking adjournment on the ground that he engaged a new Counsel, but matter was proceeded without cross examination on behalf of the Petitioner/accused. Therefore, on 30.11.2023, the Petitioner filed Application Exh.45 for recalling of order dated 06.11.2023, seeking permission to cross examine the witness. However, on 18.01.2024, the learned trial Court passed the impugned order and turned down prayer of the Petitioner, because order of no cross already been passed on 12.05.2023. As per the order dated 27.10.2023 passed below Exh.40, again opportunity was given to the Petitioner/accused to cross examine the complainant, but he failed to cross examine the witness on 06.11.2023.

3. Needless to say that during the course of trial, sufficient opportunity is required to be given to the accused to cross examine the witness. However, in the case in hand, the order of no cross came to be passed on 06.11.2023, because of the Petitioner engaged another Counsel, who failed to cross examine the witness. No doubt, though the present Petitioner was given sufficient opportunity to cross examine the complainant, but the Petitioner failed to do so on one or

other ground. Therefore, taking into consideration the principle of fair trial and proper opportunity to defend the charge, one more opportunity granted to cross examine the complainant. However, at the same time, the Respondent/Complainant suffered to receive substantial justice from the Court, because of inaction on the part of the Petitioner, which can be compensated in terms of money.

4. On 08.03.2024, this Court passed an order and granted interim stay to the proceeding of S.T.C.C. No.2107 of 2018 on the condition that the Petitioner shall deposit cost of Rs.5,000/- before the trial Court. The learned Advocate for the Petitioner fairly stated that the Petitioner has already deposited the said cost. However, considering the nature of complaint and lapse of more than six years period from the date of issuance of the cheque, the Petitioner is permitted to cross examine the Respondent/ complainant, subject to payment of additional cost of Rs.5,000/-.

5. In view of the above, **the Writ Petition is partly allowed.** The impugned order dated 18.01.2024 below Exh.45 in S.T.C.C. No.2107 of 2018, passed by the learned J.M.F.C. Dhule, is hereby quashed and set aside. The Petitioner/accused is permitted to cross

examine the Respondent complainant. Both the parties agreed to appear before the trial Court on 26.11.2024, on which date, the Petitioner through his Counsel should cross examine the complainant on payment of additional cost of Rs.5,000/- and no any further adjournment would be granted on any count. If the Petitioner fail to cross examine the Respondent on the fixed date, in that event, the order passed by the learned trial Court would come into force.

[Y. G. KHOBRAGADE, J.]

SMS