

Sharad Ramchandra Kamble	...	Petitioner
Versus		
The State of Maharashtra and Anr.	...	Respondents

Mr. Ajit M Savagave, for the Petitioner.

Ms. P. P. Bhosale, APP, for the Respondent-State.

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 12th JULY, 2024.

P.C.

By this Petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, the petitioner, who is the original accused, in a case under Section 138 of the Negotiable Instruments Act, 1881 (“N.I.Act”) challenges an order passed by learned Judicial Magistrate First Class, Ichalkaranji on 22nd March, 2022, by which his application below Exh. 42 moved under Section 311 of the Code of Criminal Procedure (Cr. P. C.) came to be rejected.

2 Heard learned Counsel for the petitioner.

3 When the evidence of the complainant commenced before the trial Court he was cross examined on behalf of the Counsel for the petitioner, however, it could not be completed on 26th December, 2019. The matter was adjourned to 17th January, 2020, however, further cross examination could not be conducted. Meanwhile, the complainant closed his evidence and the matter was fixed for recording the statement of the petitioner under Section 313 of Cr. P. C.

4 It appears that thereafter the petitioner remained absent on various dates which constrained the trial Court to issue Non Bailable Warrant against him. Even the Advocate appearing for the petitioner was absent.

5 The petitioner moved another application below Exh. 27 seeking permission for further cross examination of the complainant, however, it was rejected.

6 It appears from the impugned order that despite giving several opportunities it was the petitioner, who was responsible for deferring the cross examination of the complainant. Subsequently,

due to COVID-19 Pandemic the judicial work was partially affected and, therefore, the matter could not be proceeded further. Ultimately, on 13th November, 2021, the complainant tendered closure Pursis and, therefore, even statement of the petitioner under Section 313 came to be recorded.

7 The petitioner again moved an application below Exh. 40 seeking permission to cross examine the complainant, however, the learned Magistrate, in his wisdom, rejected the application by making observations that the accused ought to have adduced his evidence to rebutt it. The statement under Section 313 is already recorded and the matter has already been delayed for five years.

8 No doubt, a complaint under Section 138 of the N. I. Act is required to be decided and disposed of expeditiously being a summary proceeding. Nevertheless, an opportunity is required to be given to the petitioner to cross examine the complainant in light of the principles of natural justice and to get the complaint decided on merits. The cross examination of the complainant which could not be completed on the earlier occasions needs to be completed for the just decision of the case and, therefore, an opportunity is

required to be given to the petitioner to move a fresh application under Section 311 of the Cr. P. C.

9 Learned Judicial Magistrate First Class shall, after hearing the respective Counsel, pass an order keeping in mind the ratios led down by this Court in the case of **Maruti Tupekar Vs. Gangakhed Sugar and Energy Ltd.** in **Criminal Writ Petition No. 1054 of 2019** and in the case of **Shri. Kishor s/o. Anandrao Vs. State of Maharashtra.**

10 In view of above, the impugned order is set aside.

11 The petitioner shall appear before the learned Judicial Magistrate First Class on 29th July, 2024. After appearance, he shall move an application under Section 311 of Cr. P.C.

12 The learned Magistrate shall, after hearing the petitioner and the complainant afresh, pass necessary order and thereafter, proceed with the complaint in accordance with law as expeditiously as possible.

13 The petitioner shall not seek any adjournment and shall co-operate in disposal of the case.

14 The Petition stands disposed of in the aforesaid terms with no order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]