



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 328 OF 2024

PETITIONER : Sudesh Suganchand Runwal,
Aged about 42 Yrs., Occu: Business,
R/o. Market Yard, Jalna,
Tq. & Dist: Jalna

//VERSUS//

RESPONDENT : Bulchand Hirachand Wadhwani,
Aged about 70 yrs, Occu: Business,
C/o M/s. Parumal Ruchandmal
D.P. Road, Chikhali,
Tq. Chikhali, Dist: Buldhana

Mr. D. S. Khushlani, Advocate for the petitioner
Mr J. D. Bastian, Advocate for the respondent

CORAM : G. A. SANAP, J.
DATED : 1st JULY, 2024

ORAL JUDGMENT

1. Heard.
2. **RULE.** Rule made returnable forthwith. Taken up for final disposal with the consent of learned Advocates for the parties.

3. In this writ petition, the challenge is to the order dated 13.03.2024 passed by the learned Judicial Magistrate First Class, Chikhali, Distt. Buldhana, whereby the learned Magistrate rejected the application (Exh. 86), made by the petitioner, for setting aside the order of closing the evidence of the petitioner/accused dated 25.01.2024.

4. The petitioner is the accused and the respondent is the complainant. In this judgment, they are referred by their nomenclature in the complaint. The accused is facing prosecution for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the N. I. Act.”). The complainant adduced his evidence on 08.08.2023. After closing of evidence of the complainant, the case was fixed for recording statement of accused under Section 313 of the Code of Criminal Procedure (for short ‘the Cr.P.C.’). The statement of the accused was recorded on 06.01.2024. Thereafter, the matter was posted for defence evidence. The accused did not adduce defence evidence and therefore, his evidence was treated as closed vide order dated 25.01.2024.

5. The accused made an application at Exh. 86 seeking permission to adduce defence evidence by setting aside the order dated 25.01.2024. This application was opposed by the complainant. Learned Magistrate by an order dated 13.03.2024 rejected the said application. Being aggrieved by this order, the accused has filed this petition.

6. Heard learned Advocate Mr D. S. Khushlani for the accused and learned Advocate Mr J. D. Bastian for the respondent. Perused the record and proceedings.

7. Learned Advocate for the accused submits that learned Magistrate has not considered the ground stated in the application and rejected the application. Learned Advocate submitted that it has caused injustice to the accused. Learned Advocate further submitted that in order to meet the ends of justice, it is necessary to grant opportunity to the accused to lead evidence in defence.

8. As against this, learned Advocate for the complainant submitted that the accused throughout this trial has delayed the hearing of the case. Learned Advocate further submitted that the accused has no defence in the case and therefore, in order to delay

the disposal of the case repetitively he has been making the applications. Learned Advocate submitted that no interference is warranted in the order passed by the learned Magistrate.

9. It is seen that there was failure on the part of the accused to make use of the opportunity granted to him by the learned Magistrate to lead the defence evidence. The accused for some reason or the other could not utilize this opportunity. After closing the evidence of the accused, the matter was listed for argument. The accused immediately made application for setting aside the said order. The accused has also stated in this statement recorded under Section 313 of Cr.P.C. that he wants to examine himself in his defence

10. In my view, it is duty of the Court to ensure a fair trial to the prosecution as well as to the accused. Neither the prosecution nor the accused can be made to face serious consequences on account of lapses on the part of either party. In my opinion, the decision of the complaint, made under Section 138 of the N.I. Act by the respondent, on merits, would be in the interest of the respondent because such a decision of the matter on merits would certainly avoid multiplicity of the proceedings on

some technical ground. Final adjudication of the matter, on merits, is necessary to avoid multiplicity of the proceedings between the parties. It is to be noted that adjudication of the matter without defence evidence, can create difficulties for the respondent/complainant. Therefore, in my view, without laying unnecessary stress on the technicality, for the purpose of complete justice vis-a-vis the respondent, the accused can be permitted to lead evidence subject to payment of some costs. Accordingly, the writ petition is **allowed.**

11. The orders dated 13.03.2023 and 25.01.2024 passed by the learned Judicial Magistrate First Class, Chikhli, Dist. Buldhana are set aside subject to payment of cost of Rs.5,000/- (Rupees Five Thousand Only) to the respondent.

12. The application (Exh.86) made by the accused is allowed.

13. The accused is allowed to examine himself.

14. Learned Magistrate is directed to dispose of the matter expeditiously and in any case within a period of three months from the date of receipt of the copy of this order.

15. The parties shall appear before the learned Magistrate on 15.07.2024 and cooperate the learned Magistrate for expeditious disposal of the matter.

16. Rule made absolute in the above terms.

17. The criminal writ petition stands **disposed of**, accordingly.

(G. A. SANAP, J.)

Namrata