



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

CRIMINAL APPLICATION (APL) NO.711 OF 2024

Shree Mundgaonkar Jewellers and another

.Vs.

G. M. Trading through its Prop. Anup Dodiya

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr N. R. Tekade, Advocate for the applicants

Mr Sumit Joshi, Advocate for the respondent

CORAM : G.A. SANAP J.

DATE : JUNE 10, 2024

Heard learned Advocates for the parties.
Perused the record and proceedings.

2. The challenge in this criminal application is to the order dated 30.03.2024 passed by the learned Additional Chief Judicial Magistrate, Akola (for short 'the learned ACJM'), whereby the application at Exh. 119 for recalling of CW-2 for cross examination has been rejected.

3. The cross examination of the complainant i.e. CW-1 and cross of the complainant witness CW-2 was closed by the learned ACJM on account of the failure of the accused to cross examine the witnesses. The application seeking permission to recall the two witnesses

and to cross examine the witnesses made by the accused was rejected by the learned ACJM. That order was challenged before this Court by way of Criminal Application (APL) No. 23 of 2024. This Court vide order dated 08.01.2024 allowed the said application and granted liberty to the accused to cross examine CW-1 and CW-2 on the next date i.e. 23.01.2024. On 23.01.2024, the cross examination of CW-1 was recorded. The cross examination of CW-2 was not recorded.

4. After this, the accused made an application on the next date of the hearing i.e. 6.02.2024 at Exh. 119 and prayed for recalling of CW-2 for cross examination. The said application has been rejected. The said order is challenged before this Court in this application.

5. Perusal of the order passed by the learned ACJM would show that neither the complainant nor the accused made any statement about the presence of CW-2 on 23.01.2024. The valuable right of cross examination was granted in favour of the accused. It was the duty of the complainant to secure the presence of CW-1 and CW-2. It was equally the responsibility of the learned Judge to record the cross examination of CW-1 and CW-

2 on 23.01.2024. The record is silent about the presence or absence of CW-2.

6. Learned Advocate for the applicant submits that the cross examination of CW-1 went on till 6:00 p.m. and after completion of the cross examination, the case was adjourned to 06.02.2024. In view of the direction of this Court, the learned Magistrate by recording all these facts could have adjourned the matter to the next date and completed the recording of the cross examination of CW-2. Learned ACJM has observed in his order that since the direction was to record the evidence on the next date i.e. 23.01.2024, it will not be within his power to extend the time and record the cross examination later on. In my view, there appears to be failure on the part of the complainant, the accused and the learned ACJM to understand the spirit of the order passed by this Court. In any case, the right of cross examination has been granted for the reasons recorded in the order dated 08.01.2024. In my view, in order to meet the ends of justice and to safeguard the interest of both parties it would be just and proper to allow this application.

7. The criminal application is allowed.

8. The accused is granted liberty to cross examine the CW-2.

9. Learned ACJM, Akola shall take the necessary steps to secure the presence of CW-2 on the next date i.e. 19.06.2024. The cross examination of CW-2 be recorded on the same day. The complainant and the accused shall extend the fullest cooperation to the Court for this purpose.

10. The application stands **disposed of**, accordingly.

(G. A. SANAP, J)

Namrata