



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

CRIMINAL WRIT PETITION NO. 962 OF 2024

PETITIONER : 1. Narayan Farm Produce Pvt. Ltd.
A Company registered under the
Companies Act,
Having its place of office at Plot
No.01 -R, Pioneer Residency Park,
Somalwada, Wardha Road, Nagpur,
Tah. And District, Nagpur
Also at: 160, Sushil Ramnagar,
Nagpur – 440010, Tah. And District
Nagpur, Through its Director Sunil
Prabhakaran Menon

2. Suresh Narayanan Nair,
Aged about 69 years,
Occ: Business

3. Shashi Nair,
Aged about 54 years,
Occ: Business

4. Sunil Prabhakaran Menon,
Aged 49 years,
Occ: Business
Petitioner Nos.2 to 4 are R/o
Plot No.01 -R, Pioneer Residency Park,
Somalwada, Wardha Road, Nagpur,
Tah and Dist. Nagpur

//VERSUS//

RESPONDENT : Kailash s/o Chunnilal Agrawal
Aged 76 years, Occ: Retired
R/o 703, Sai Regency, Ravi Nagar
Square, Nagpur, Tah. And Dist.
Nagpur through Power of attorney

Rajeev s/o Chunnilal Agrawal

Ms S. O. Tapadia, Advocate h/f Mr. S.P. Deshpande, Advocate
for the petitioners.

Mr. S.S. Dewani, Advocate for the respondent.

CORAM : G. A. SANAP, J.

DATED : 18.12.2024.

ORAL JUDGMENT

Heard finally by the consent of learned Advocates for
the parties.

2. In this writ petition, challenge is to the order dated
05.10.2024 passed by the learned Additional Chief Judicial
Magistrate, Nagpur, whereby the learned Additional Chief Judicial
Magistrate rejected an application made by the petitioner seeking
leave to set aside no-cross order dated 15.07.2024.

3. In view nature of the order, it is not necessary to narrate
the facts in detail. Suffice to state that the private complaint filed
by the respondent under Section 138 of the Negotiable
Instruments Act, 1881 was fixed for recording the evidence. There
was default on the part of the petitioner to cross-examine CW-1.
The order closing the cross-examination of CW-1 was set aside on

three earlier occasions. Thereafter the matter was posted for cross-examination of CW-1. Since the petitioner did not take steps to cross-examine CW-1, the respondent/complainant made an application for summoning the witness No.2 and which prayer was granted by the learned Additional Chief Judicial Magistrate. The witness was present on 15.07.2024. Learned Judge, in his order, has recorded that the accused was present but he did not take steps to cross-examine CW-1. The accused left the Court on the pretext of calling his advocate and thereafter did not come back.

4. The learned Additional Chief Judicial Magistrate has not recorded in his order of summoning CW-2 that there was a failure on the part of the accused to cross-examine CW-1. Learned Additional Chief Judicial Magistrate was required to ensure the completion of recording of evidence of CW-1. It is true that on 15.07.2024 the Advocate for the accused did not appear. It seems that therefore, this fact could not be brought to notice of the learned Additional Chief Judicial Magistrate. It appears that there was some procedural irregularities. However, the record shows that there was consistent failure on the part of the accused to proceed with the matter. The malafides of the accused are writ large. In my view, in order to give finality to ultimate decision in the complaint

case, it is necessary to ensure that the matter is not proceeded further with such procedural irregularities. As such, I conclude that an opportunity deserves to be granted to the accused/petitioners to cross-examine CW-1 as well as CW-2. However, considering the malafides of the accused such liberty cannot be granted without imposing cost.

5. In the facts and circumstances, petition is allowed subject to cost of Rs.10,000/- (Rupees Ten Thousand Only).

6. The impugned order dated 05.10.2024 is set aside. The application at Exh. 85 is allowed. The accused is allowed to cross examine CW-2.

7. Learned Judge shall first record the cross-examination of CW-1 and then proceed to record cross-examination of CW-2.

8. The cost be paid to the complainant.

9. Learned Additional Chief Judicial Magistrate shall fix the date for recording of cross-examination of CW-1 and CW-2.

10. The parties to appear before learned Additional Chief Judicial Magistrate on 03.01.2025.

11. Learned Additional Chief Judicial Magistrate shall make endeavour to dispose of the case expeditiously.

12. Criminal Writ Petition stands disposed of in the aforesaid terms.

(G. A. SANAP, J.)