



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

Criminal Application [APL] No.1635 of 2023

Rambhau Daulatrao Khedkar vs. Girdhar Fakirchand Agrawal

and

Criminal Application [APL] No.1636 of 2023

Rambhau Daulatrao Khedkar and another vs. Girdhar Fakirchand Agrawal

and

Criminal Application [APL] No.1659 of 2023

Rambhau Daulatrao Khedkar and another vs. Girdhar Fakirchand Agrawal

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.V. Sirpurkar, Advocate for the Applicant(s)/Accused.
Mr. S.A. Mohtra, Advocate for the Non-Applicant/Complainant sole.

CORAM : **M.W. CHANDWANI, J.**
DATE : **24th JANUARY, 2024.**

All three applications raise a common question and the parties to these applications are also common, therefore, they are being decided by this common order.

02] These applications challenge the common order dated 30/09/2023 passed by the learned Judicial Magistrate First Class, Akola, rejecting the applications of the applicant(s)/accused for recalling the non-applicant/complainant for cross-examination in summary criminal complaints filed by the non-applicant against the applicant(s) for dishonour of cheque,.

03] The non-applicant has filed the said criminal complaints against the applicant(s) for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "N.I. Act" for short), before the learned Judicial Magistrate First Class, Akola. The non-applicant examined himself. The Counsel for the applicant(s)

conducted cross-examination of the non-applicant. Thereafter the matter was fixed for recording the statement(s) of the applicant(s). The applicant(s) made applications before the learned Magistrate under Section 311 of the Code of Criminal Procedure (Cr.P.C. for short) for recalling the non-applicant/complainant on the premise that some facts remained to be put to the complainant, which were not put by the earlier Counsel, even though instructed by the applicant(s). The said application was opposed by the non-applicant. The learned Magistrate passed a detailed order and rejected the application on the ground that the application has been filed to prolong the matter and has not given details to consider whether recalling of the witness is necessary for the just decision of the case.

04] Learned Counsel Mr. S.V. Sirpurkar appearing on behalf of the applicant(s) vehemently submits that Section 311 of Cr.P.C. empowers the Court to examine the witnesses at any stage of the trial for the just decision of the case. Some questions in respect of some transactions were necessary to be put to the complainant, which were not put by the earlier Counsel for the applicant(s). Due to the mistake of the earlier Counsel, such questions, which were discussed in his chamber, were not put to the non-applicant. Therefore, it was necessary to recall the non-applicant for the just decision of the case.

05] *Per contra*, learned Counsel Mr. S.A. Mohta for the non-applicant submits that no material was placed before the learned Magistrate to justify recalling of the non-applicant. According to him, the application is made just to prolong the matter. According to him, the criminal complaints are of the year 2004. The non-applicant was cross-examined way back in the year 2022, and after a gap of more than six months, the said applications came to be filed to prolong the matter. According to him, mere not putting of proper questions to the

non-applicant by earlier Counsel for the applicant(s) while conducting the cross-examination, cannot be a ground to recall the witness again for cross-examination. He, therefore, seeks to rely on the decision of the Supreme Court in the case of *State of Haryana vs. Ram mehar and Ors.*¹.

06] Perusal of the applications for recalling of the witness as well as the impugned order does not reveal that the applicant(s) has put details/material in the applications to come to a conclusion that recalling of witness is necessary for the just decision of the case. Even in the applications before this Court, no such details have been given to arrive at a conclusion that recalling of the non-applicant is necessary for the just decision of the case pending before the learned Magistrate. However, during the course of argument, it has been submitted that the cheques, in question, were given to the applicant(s) for Mr. Satish Ramgopal Toshniwal. Those cheques issued to the non-applicant were dishonoured and it is Mr. Toshniwal, who is liable to be prosecuted and not the applicant.

07] The learned Counsel for the non-applicant took me to the tenor of the cross-examination of the non-applicant. Perusal of cross-examination reveals that the questions with regard to issuance of cheque by the applicant(s) for Mr. Satish Toshniwal, have been put to the non-applicant. Rather, the learned Counsel for the non-applicant placed on record a copy of second appeal preferred by the applicant(s), where a money decree arising out of the said transactions was reversed by the first appellate Court, which was restored by the High Court. Since, the ground on which the recall of witness is sought, i.e. putting question with regard to the transactions amongst the applicant(s), non-applicant and Mr. Toshniwal, are already put to the non-applicant,

therefore, I do not feel that recalling of the non-applicant for further cross-examination is necessary for the just decision of the case.

08] That apart, it appears that the criminal complaints are pending before the learned Judicial Magistrate First Class for more than seven years. Further, the non-applicant has been examined by the Counsel for the applicant(s) in detail and the applications are made almost after eight months of cross-examination of the non-applicant. The learned trial Court has rightly held that the applications are sans merits. Hence, no interference is warranted in the impugned order. Accordingly, the applications are rejected.

JUDGE