



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

CRIMINAL APPLICATION (APL) No.23 OF 2024

(Shree Mundagaonkar Jewellers, through its proprietor/authorized signatory and another
Vs. G.M. Trading, through its proprietor)

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

Court's or Judge's orders.

Mr. N.R. Tekade, Advocate for applicant.
Mr. Mir Nagman Ali, Advocate for non-applicant.

CORAM : M.W. CHANDWANI, J.
DATE : 08th JANUARY, 2024.

1. By this application the applicant/accused is seeking to quash and set aside the order passed on Exh.-77 by learned Judicial Magistrate, First Class, Akola, Court No.5 in Summary Criminal Case No.2253/2021, thereby rejecting to recall the order of No Cross-examination.

2. In a complaint filed for offence punishable under Section 138 of the Negotiable Instruments Act, 1881, the complainant examined his witnesses. However, due to absence of counsel for the accused the learned Magistrate passed the order of 'No Cross'. On 19.10.2022 'No Cross' order was set aside and accused was permitted to cross-examine the witnesses. The counsel for applicant did not remain present for cross-examination. Again no order of cross-examination was passed. Thereafter, application Exh.-68 for setting aside the order of 'No-cross' was filed by the applicant-accused. Since, the said application was pending, accused moved another application at Exh.-77 for

deciding the application Exh.-68 and allowing him to cross-examine the witnesses. By the impugned order the learned Magistrate rejected the application Exhs.-68 and 77 and refused to recall order of No Cross-examination. Against which, the present application under Section 482 of the Criminal Procedure Code came to be filed.

3. Heard learned counsel for the applicant as well as non-applicant.

4. The learned Magistrate in para 5 of the impugned order has noted the conduct of the applicant and came to the conclusion that this is nothing but delaying tactics and rejected the applications.

5. It is matter of record that the applicant was in jail in Crime No.53/2022, registered for offence punishable under Sections 406, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999. The applicant was being produced in Summary Case No.2353/2021 through video conferencing, rather he was provided counsel from Legal Aid Panel. Therefore, he could not cross-examine.

6. Since the applicant was in jail when the first order of no cross-examination was passed, even, the appointed counsel did not appear just because, the objection was raised by the non-applicant over the appointment of Legal Aid counsel. Needless to mention at that time the applicant was in jail, therefore, what he could do best, he did and sought counsel from Legal Aid Panel. There was no fault of the applicant at first instance of not conducting cross-

examination. No doubt on subsequent occasion neither the applicant nor his counsel did remain present to cross-examine the witnesses. Considering the past instance, which was not attributed to the applicant the application Exhs.-68 and 77 came to be rejected.

7. In the circumstances above the applicant should not be deprived of valuable right of cross-examination. Therefore, the application deserves to be allowed. So far as inconvenience caused to non-applicant the cost would suffice the purpose. Hence, this order.

8. The application is allowed.

9. The order dated 8.11.2023 passed below Exh.-77 is set aside.

10. The applicant is permitted to cross-examine the complainant and his witnesses on payment of cost of Rs.5,000/-.

11. The applicant shall appear before the learned Magistrate on the next date of hearing.

12. Cross-examination be completed on next date of hearing before the learned Magistrate.

13. Learned counsel for the applicant also undertakes to deposit amount of Rs.1,00,000/- within one month in view of order dated 4.12.2021 passed by the learned Magistrate.

(M.W. CHANDWANI, J.)