



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

CRIMINAL WRIT PETITION NO. 336 OF 2024

Bahauddin S/o. Aleemuddin Kazi

Vs.

Shankar Trading Company through its Proprietor Babarao Wankhede

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

Court's or Judge's orders

Mr. S.S. Kazi, Advocate for the Petitioner.

CORAM : G. A. SANAP, J.

DATED : 18th NOVEMBER, 2024.

1. Heard learned advocate for the petitioner. The respondent is served, but he has failed to appear before this Court.

2. In this petition, challenge is to the order dated 2nd November, 2023, passed by the learned Judicial Magistrate First Class, Umerkhed, District Yavatmal, whereby the learned Magistrate rejected the application at Exh.69 made by the complainant to examine himself as a witness.

3. As far as the facts are concerned, the same are not required to be stated in detail. It would suffice to state that, after filing the complaint by the petitioner/complainant under Section 138 of the Negotiable Instruments Act, 1881 (for short, "N.I. Act"), the process was issued against the accused. The complainant had his own difficulty, and therefore he executed a power of attorney in favour of his cousin brother. The Constituted Attorney stepped into the witness-box on behalf of

the complainant. He was cross-examined. After the evidence of the Constituted Attorney, the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (for short, "Cr.PC") has been recorded. The accused has also examined himself as a defence witness.

4. It is seen that, after completion of the evidence of the accused, the complainant made the application at Exh.69 and prayed that he be allowed to examine as a witness. The learned Magistrate, by a well-reasoned order, rejected the application. The petitioner has questioned the correctness of the said order in this petition.

5. It is evident that the complaint was filed by the Constituted Attorney of the complainant. The Constituted Attorney stepped into the witness-box and deposed on oath. No request was made at any stage of the proceeding till the application was made by the complainant to allow the complainant either to examine himself or any other witness. The evidence of the accused is also over. The learned Magistrate, on the basis of the available record, has observed that the application made by the complainant is nothing but an attempt to fill up the lacuna. It is seen on perusal of the record that the complaint was filed by the Constituted Attorney of the complainant. It appears that now the complainant has realized that some mistake has crept in and therefore he has made this application. The learned Magistrate has observed that the complainant has not shown that his examination is necessary for just decision of the case.

6. It is to be noted that, in this case, the complainant was required to make a categorical statement as to how the evidence of the Constituted Attorney would not be sufficient to prove the relevant facts. It was also incumbent upon him to place the relevant facts related thereto on record. The complainant, without any justification, made the application before the Court under Section 311 of the Cr.PC to lead his evidence. The learned Magistrate has applied his mind to the relevant facts and rejected the application.

7. On perusal of the order and record, I am satisfied that the learned Magistrate has not committed any mistake or illegality. As such, I do not see any substance in the petition. The petition is accordingly **dismissed**.

(G. A. SANAP, J.)

Vijay