



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 268 OF 2025

PRASHANT VINAYAK MAHAJAN
VERSUS
MADHUKAR NAMDEV KOLI

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Advocate for Petitioner : Mr. Patil Prafullasing H.
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CORAM : SHAILESH P. BRAHME, J.
DATE : 07.04.2025

PER COURT :-

1. Heard learned counsel for the petitioner.
2. This writ petition is preferred against the order dated 04.11.2024 rejecting application Exh.31 seeking permission to conduct cross-examination after recording of examination-in-chief of all the witnesses of respondent/complainant.
3. Petitioner is facing prosecution in SCC.No.901 of 2023 for the offence under Section 138 of Negotiable Instruments Act. Respondent/complainant tendered affidavit in lieu of examination-in-chief and petitioner was to cross-examine him. At that time, application Exh.31 was submitted seeking permission to defer cross-examination and permission to conduct cross-examination of all the witnesses. By impugned order, the application is rejected which is under challenge.

4. Learned counsel for the petitioner submits that if the petitioner conducts cross-examination of the respondent, his defence would be opened and great prejudice would be caused. Hence, a reasonable request was made to complete the examination-in-chief followed by cross-examination of the respective witnesses. He relies on principles laid down by Supreme Court in the matter of *Indian Bank Association and others Vs. Union Bank of India and others ; (2014) 5 Supreme Court Cases 590*. Learned counsel would further submit that after completion of the examination-in-chief of all the witnesses, his client undertakes to complete cross-examination of every witness within a day or two.

5. I have gone through the judgment cited by learned counsel for the petitioner in the matter of *Indian Bank Association and others Vs. Union Bank of India and others*. The directions issued by Apex Court in paragraph No.23 specially 23.5 which is pressed into service is as follows :

“23.5. The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. The witnesses to the complaint and accused must be available for cross-

examination as and when there is direction to this effect by the Court.”

6. Hon’ble Apex Court was dealing with the case in view of Section 145 of the Negotiable Instruments Act. It was not the purport of the Apex Court to direct that in the matters under Section 138 of N.I.Act, the Trial Magistrate would resort to the procedure of either recording examination-in-chief of all witnesses first and thereafter permitting the accused to conduct cross-examination of each witness. The direction referred above does not specify any such modality.

7. The petitioner did not specify in the application Exh.31 any legal sanctity for adopting the procedure as prayed for in the application. It is not permissible to deviate the procedure laid down by the Code and Section 145 of the N.I. Act. It is not the choice of the accused to decide the sequence in which the cross-examination is to be conducted.

8. The submissions of learned counsel that prejudice is likely to be caused or the defence would be disclosed are based on conjecture and surmises. For that purpose, recourse cannot be had to collect the affidavits in lieu of examination-in-chief of the witnesses or to record examination-in-chief of all

the witnesses and then to permit the accused to conduct cross-examination of each witness one by one.

9. I do not find any perversity or illegality in rejecting the application Exh.31. No case is made out to cause any interference.

10. Writ petition stands dismissed.

(SHAILESH P. BRAHME, J.)

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vmk/-