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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.883 OF 2022

Milind Yashwant Paranjape

VERSUS

Buldhana Urban Coop. Credit Society Ltd. Buldhana

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Mr P. K. Lakhotiya, Advocate for Petitioner

Mr Vaibhav P. Deshmukh, Advocate for Respondent

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CORAM : SUSHIL M. GHODESWAR, J.

DATE : 13 OCTOBER 2025

P. C. :

1. By this petition, the petitioner/original accused is challenging the order dated 04/05/2022, passed by the learned 6th Judicial Magistrate First Class (JMFC), Aurangabad below Exhibit 61 in S.C.C No.1505/2018, thereby rejecting the application filed by him for setting aside the no-cross order and proceeding matter without cross-examination of the complainant witness.

2. Petitioner is the original accused in S.C.C. No.1505/2018 which was filed by respondent/Credit Society under Section 138 of the Negotiable Instruments Act, 1881. The said matter is pending for evidence with the learned JMFC, Aurangabad. This matter was

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adjourned on several occasions. In the meantime, on 11/04/2022, petitioner came to know that no-cross order has been passed by the learned JMFC on 21/03/2022. Being aggrieved by the said order, petitioner filed application before the learned JMFC below Exhibit 61 for setting aside the no-cross order passed on 21/03/2022. Vide the impugned order dated 04/05/2022, the learned J.M.F.C., Aurangabad rejected the application of the petitioner below Exhibit 61 for setting aside the order dated 21/03/2022, wherein it was directed that the matter to be proceeded without cross-examination of the complainant witness. Being aggrieved by the said order, the petitioner is before this Court.

3. It was contended by the petitioner vide his application below Exhibit 61 before the JMFC that, on 11/04/2022, the application for dispensing personal attendance of the petitioner/accused was filed and the same was granted. On that day, the Court of JMFC was busy in another matter till 1:00 p.m. and the complainant's witness was also not present. Thereafter, no cross-examination order came to be passed. The order discloses that the matter was adjourned on several times. Learned JMFC directed that the matter shall proceed without cross-examination of the complainant witness as the petitioner/accused

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failed to cross-examine complainant witness, namely, Khushboo. The cross-examination of that witness was started on 20/12/2021, however, on the request of learned Advocate for the accused, the matter was adjourned to 25/01/2022. Thereafter, it was again adjourned to 24/02/2022 and then to 21/03/2022. On the said date, the order below Exhibit 10 of proceeding the matter without cross-examination came to be passed. It was observed by the learned JMFC that it is the accused/petitioner, who is prolonging the matter and despite granting sufficient opportunities to him, he has failed to cross-examine of the complainant witnesses.

4. Heard learned Advocate Mr Lakhotiya for the petitioner and learned Advocate Mr Deshmukh for the respondent.

5. Mr Lakhotiya, learned Advocate for the petitioners submits that the impugned order passed by the learned JMFC is illegal and violative of principles of natural justice. He further submits that the learned Trial Court has not considered that on earlier date i.e. on 21/03/2022, the petitioner's Advocate was present in morning session, but complainant's witness was not present. Even the exemption application on that date was allowed by the learned JMFC in the morning session. He further states that, on 21/03/2022 in the afternoon

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session, witness of the complainant arrived in the Court and obtained the order of no cross-examination by misleading the Court by pointing out that the petitioner as well as his Advocate both are absent and not ready for cross-examination. He further points out that the matter was adjourned for placing on record bye-laws of the respondent/Society as witness was ready to produce the same. Since the said witness has not produced the bye-laws of the society, cross-examination could not proceeded further. He further submits that, proceedings before the learned JMFC is of criminal nature and opportunity ought to have given to the petitioner for pursuing his case, however, learned Trial Court has failed to afford opportunity to the petitioner to cross-examine the complainant witness. Thus, he prays that by way of last opportunity, the petitioner be permitted to cross-examine the complainant witnesses.

6. Per contra, learned Advocate Mr Deshmukh for the respondent/complainant strongly opposes the present petition. He submits that the order passed by the learned JMFC is proper and well reasoned which requires no interference. He further submits that it is the petitioner, who was granted several opportunities to cross-examine the complainant witness but was consistently absent and has not

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conducted cross-examination of the complainant witnesses. He, thus, submits that the petitioner was prolonging the matter, and therefore, the present petition is liable to be dismissed.

7. I have heard the the learned Advocates for the respective sides and perused the impugned order and the record available with the Court.

8. The order impugned was passed by the learned JMFC is although not defective, however, denial of opportunity to cross-examine the complainant witness is a serious violation of petitioner's fundamental right to fair trial and its denial can lead to great prejudice against the accused. This right cannot be deprived even petitioner fails to comply with certain conditions. While the right to cross-examine is paramount, the trial court can still exercise its discretion in the case, but it cannot deny the right to cross-examine.

9. In that view of the matter, in order to give one more chance to the petitioner, I am inclined to grant opportunity to the petitioner to cross-examine the complainant's witness. The impugned order dated 04/05/2022, passed by the learned 6th Judicial Magistrate First Class (JMFC), Aurangabad below Exhibit 61 in S.C.C No.1505/2018 is hereby quashed and set aside. The petitioner is

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having right to defend, and as such, in order to afford fair opportunity of cross-examination, he is required to be directed to conduct cross-examination of the complainant's witness, however, that would be permissible only on the condition of payment of costs and further that the petitioner and his Advocate shall remain present on the next date of hearing, which is scheduled on 02/12/2025 before the learned JMFC. Learned JMFC is hereby directed to permit the petitioner to cross-examine the complainant witness on the said date.

10. With the above observations and directions, the present writ petition is allowed, subject to costs of Rs.15000/- (Rs. Fifteen Thousand) to be paid by the petitioner to the respondent within a period of two weeks from today.

[SUSHIL M. GHODESWAR, J.]

sjk