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34-WP-1673-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

34 CRIMINAL WRIT PETITION NO. 1673 OF 2024

Kulbhushan S/o Mahaveer Kondekar

VERSUS

Vijaykumar S/o Vishwanathappa Kaulkhere

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Mr. Vinod Deeliprao Godbharle, Advocate for the Petitioner.

Mr. R. B. Dhaware, APP for Respondent-State.

Mr. R. P. Adgaonkar, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 27th JUNE 2025

PC :-

1. At the outset, the learned Advocate for the petitioner seeks leave to correct the designation of the witness in the prayer clause. Leave granted.
2. Heard the learned Advocate for the parties. The petition is taken up for final disposal at the stage of admission.
3. The petitioner has challenged an order dated 14th August 2024 passed by the learned Additional Sessions Judge-4, Latur, in Criminal

Revision Application No.37 of 2022 dismissing the revision of the present petitioner. The petitioner is mainly aggrieved by an order passed by the learned JMFC, dated 21st June 2022 whereby the application of the present petitioner came to be rejected. He had prayed for recall of the order of closing evidence dated 4th March 2022.

4. The present petitioner is facing trial for an offence under Section 138 of the Negotiable Instruments Act. The evidence of the complainant is over. The evidence of the defence is going on. The petitioner examined himself on oath. Thereafter, he filed an application for recalling one Police Officer as a witness in the trial. The learned JMFC, Latur was pleased to allow the application on 29th January 2019. Thereafter, from time to time, the matter was on board. During the covid-19 pandemic period, no steps could be taken. However, thereafter steps were taken and inspite of that, witness could not be served as he was transferred to a different place. On 24th January 2022, the Court again issued witness summons and adjourned the case to 4th March 2022. However, on 4th March 2022, the Court passed an order closing evidence of the accused

on the ground that case had been pending for more than five years. The accused, thereafter, filed an application for recall of order. The same came to be rejected which is now carried to this after dismissal of the revision application.

5. Learned Advocate for the petitioner vehemently argued that once the Court was convinced that the witness is necessary, it ought to have waited till the next date for service on 24th January 2022. When the Court directed to issue witness summons and made it returnable on 4th March 2022, the communication could have been closed on the very day. The revisional court also failed to appreciate this fact. The learned Advocate thus prays for allowing the writ petition.

6. The learned Sessions Judge also mainly observed that on many occasions the matter was fixed for evidence of the petitioner. It further recorded that no legality is pointed out.

7. The learned Advocate for the respondent vehemently opposed the application. He submits that the Court had waited sufficiently for long

time. It is inaction on the part of the petitioner that he could not serve the witness. He supports the order passed by the learned Sessions Court.

8. Having heard the parties. It is observed that initially, the learned JMFC had issued witness summons. On many occasions, the matter was adjourned on that count. However, suddenly, on 4th March 2022, it closed the evidence of the present petitioner. It is evident from the record that for some period, the petitioner could not serve the witness. It is the matter of fact that for some period, there was a nationwide lock down due to covid-19 pandemic. During that period, the petitioner naturally could not serve the summons of witness. Both the Courts have failed to appreciate this main aspect. In any case, to give fair opportunity to the petitioner is necessary, and in that view, this Court is inclined to allow the writ petition. The petition is, therefore, allowed in terms of prayer clause (A).

[KISHORE C. SANT, J.]