

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Writ Petition No.4049 of 2024

Suresh Mahadev Dhotre

... Petitioner.

V/s.

State of Maharashtra and anr.

... Respondent/s.

Mr. Madan Gupta a/w. Ms. Priti Jain i/b. Advocate Shrishti Singh	Advocate for the Petitioner.
Mr. H.J. Dedhia	APP for the State.

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CORAM : S.M. MODAK, J

DATE : 28th July 2025.

P.C. :

Heard learned Advocate for the Petitioner-Accused.

2. The Petitioner is facing prosecution for the offence under Section 138 of the Negotiable Instrument Act before the Court of then Metropolitan Magistrate, Esplanade. The case is of the year 2017.

3. The Complainant has filed affidavit of examination-in-chief. Though liberty is given to the Complainant to cross-examine him, he has not availed of the opportunity. He applied for re-calling the Complainant. As per the provisions of Section 311 of the Cr.P.C., it was rejected on 27th June 2024.

4. I have read the order.

5. The learned Magistrate has quoted two facts:

(i) Liberty was granted on earlier occasion, however, it is not exhausted.

(ii) Even cost is imposed and still cross-examination is not taken.

Hence, rejected the application.

6. The submission is made if one opportunity is granted, the Petitioner will certainly cross-examine the Complainant and if it is not taken, the trial Court may proceed with the matter. Now the matter is fixed for final arguments.

7. It is true an endeavour should be made to dispose of the matter on merits but any of the party cannot far stretch this principle so that it will amount to misuse of the process of law. Except the order no record is made available. If the matter will proceed further under these circumstances and if the Petitioner is convicted, there will be hardly any scope for him to argue the matter in an appeal. It is true litigants do commit mistakes but he needs to be given an opportunity to conduct the matter on merits on the assurance that cross-examination will be conducted. **I am in favour of granting such an opportunity.**

8. However, yet notice is not issued to the Complainant-Respondent No.2. He needs to be heard. If he is heard, one of the

condition of allowing the application will be imposing the heavy cost. This can be done by the trial Court. Hence, instead of allowing the Petition in toto, I am again granting opportunity to the Petitioner to move the trial Court. Hence, the order:

ORDER

- (i) The Petition is partly allowed.
 - (ii) The Petitioner is permitted to file fresh application before the trial Court for recalling the Complainant for the purpose of cross-examination.
 - (iii) The trial Court to decide that application by keeping in view the observations made in the aforesaid order.
9. The Writ Petition stands disposed of.

(S.M. MODAK, J.)