

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

Criminal Writ Petition No.5942 of 2024

1. Atul Sharad Kamble

Aged: 57 years,

Occupation: Business

2. Pratidnya Atul Kamble

Aged: 50 years,

Occupation: Housewife

Both are residing at Silver Oak 2,
Flat No.101, St Lawarance Coloney,
BT Kawade Road, Pune – 411 013.

...Petitioners

Versus

1. State of Maharashtra

Through Public Prosecutor

2. Greatt Town Trading Pvt Ltd

A Company registered under the
Companies Act, having their office
at Patuck Press Compound, SY Chowk,
Kalachowki, Cotton Green (W),
Mumbai – 400 033.

...Respondents

Mr Kevin Gala i/by Mehul Thakker, for the petitioners.

Mr MG Patil, APP, for respondent No.1/State.

Ms Heena Khan, for respondent No.2.

Coram: R.N. Laddha, J.

Date: 6 February 2025.

P.C.:

The petitioners are facing criminal charges in the Court of 20th Judicial Magistrate First Class, Mazgaon, Mumbai, in CC No.113/SS/2017, for an alleged offence under Section 138 of the Negotiable Instruments Act, 1881 ('the NI Act'). On 30 July 2024, the petitioners filed an application under Exhibit 94 seeking permission to recall the complainant for further cross-examination. The learned trial Court rejected this application by an order dated 26 September 2024. Aggrieved and dissatisfied, the petitioners approached this Court under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC').

2. Mr Kevin Gala, the learned Counsel appearing on behalf of the petitioners, submits that on 18 October 2023, 29 November 2023, 15 January 2024 and 15 February 2024, the complainant remained absent while the petitioners' Advocate was present to cross-examine the complainant. Subsequently, as the Court was on leave, the board was discharged, and the matter was adjourned to 25 April 2024. On 25 April 2024, once again, the complainant did not remain present and could not be cross-examined. Consequently, the matter was adjourned to 12 June 2024. On 12 June 2024, although the complainant and the petitioners' Advocate were present, the trial Court, without any justification, closed the cross-

examination of the complainant and adjourned the matter to 30 July 2024 for examination of the bank witness. Later, on 30 July 2024, the petitioners filed an application to recall the complainant for cross-examination, and on 26 September 2024, this application was rejected. The learned Counsel further submits that to rebut the presumption under Section 139 of the NI Act; the accused must be allowed to cross-examine the complainant. Since the law places the burden of proof on the accused, he must be allowed to discharge this burden. The accused has the right to a fair trial and to defend himself, a fundamental right enshrined under Article 21 of the Constitution of India.

3. The learned Counsel further submits that the petitioners have no intention of delaying the trial and are prepared to conclude their defence by examining the complainant within one day, i.e. on 20 February 2025, the next date before the trial Court, on any terms and conditions this Court deems fit, including the payment of costs. Mr Gala assures this Court that the petitioners will not seek any adjournments and will cooperate with the trial Court for the expeditious disposal of the case.

4. Ms Heena Khan, the learned Counsel representing respondent No.2, submits that the oral and documentary

evidence on record clearly shows that the petitioners/accused lack a credible or substantial defence and have delayed the trial by prolonging the examination of witnesses. The petitioners should not be allowed to prolong the trial by filing frivolous applications, given that the summary nature of proceedings under Section 138 of the NI Act contemplates that the trial should conclude within six months.

5. This Court has considered the rival submissions canvassed across the Bar and perused the material placed on the record.

6. It is undisputed that the accused has a right to cross-examine the complainant. However, this right cannot be used to delay the proceedings. The petitioners are entitled to challenge the complainant's case, and the cheques relied upon by the complainant to initiate criminal proceedings hold significant potential. By declining to cross-examine the complainant, especially when the complainant remained absent on five occasions: 18 October 2023, 29 November 2023, 15 January 2024, 15 February 2024 and 25 April 2024, the Magistrate has deprived the petitioners of an opportunity to contest the complainant's claim, and the petitioners cannot be convicted without being given a chance to present their defence. A fair trial requires that the accused be given

reasonable and lawful opportunities to establish his innocence. The right to cross-examine the witness/complainant is valuable, and denying this right undermines the principles of a fair trial.

7. It is undeniable that the accused should not be permitted to delay the trial unnecessarily. In the present case, to address the complainant's concerns about potential delays, Mr Gala has assured this Court that the complainant will be cross-examined within one day on 20 February 2025 if the complainant remains present before the trial Court. Further, the petitioners commit not to seek any further adjournments and cooperate fully with the trial Court to ensure the expeditious disposal of the case.

8. In light of the above, the impugned order dated 26 September 2024 passed by the learned Magistrate is quashed and set aside, subject to the payment of the cost of Rs.50,000/- to respondent No.2 within two weeks from today. The learned Magistrate is directed to take the necessary steps as observed above.

9. The petition stands disposed of accordingly.

[R.N. Laddha, J.]