

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1555 OF 2025

Tresa Samuel

...Petitioner

Versus

Adbul Hamid Khan and anr.

...Respondents

Mr. Rahul Mohite, for the Petitioner.

Mr. Prasanna Malshe, APP for the State.

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CORAM: N. J. JAMADAR, J.

DATED: 6th NOVEMBER, 2025

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 5th February, 2025 passed by the learned Magistrate, 43rd Court, Borivali, whereby an application preferred by the petitioner to recall the complainant for cross-examination under Section 311 of the Code of Criminal Procedure, 1973, came to be rejected.
3. The learned Magistrate was persuaded to reject the application primarily on the ground that the complaint was filed in the year 1997 and the cross-examination of the complainant was completed long back.
4. The learned Counsel for the petitioner submitted that the petitioner was constrained to file the application to recall the

complainant, as the complainant did not produce the relevant documents despite an admission in the cross-examination that he had maintained the record of the business, which was carried on by the complainant since 1988. The trial Court had rejected an earlier application to direct the complainant to produce those documents.

5. Evidently, the cross-examination of the complainant was completed long back. Nothing prevented the petitioner from further cross-examining the complainant on the aspect of the production of the relevant record. The complaint is pending for about 27 years. Under the provisions of Section 143(2) of the Negotiable Instruments Act, 1881, the trial in the complaint is required to be completed within six months of filing of the complaint. Having regard to the time-lag and the reasons assigned in the application to recall the complainant for further examination, the learned Magistrate was justified in rejecting the prayer to recall the complainant for further cross-examination. In any event, the initial onus would rest on the complainant to show that the cheque was drawn in discharge of legally enforceable debt or liability. Whether the failure to produce the documents dents the complainant's case would be a matter for adjudication at the trial. Thus, this Court, in

exercise of writ jurisdiction, does not find any justifiable reason to interfere with the impugned order.

6. The petition stands dismissed.

[N. J. JAMADAR, J.]