

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4800 OF 2025

Vikrant Aggarwal

..Petitioner

Versus

State of Maharashtra & Anr

...Respondents

Mr. Narendra Kumar Sharma, for the Petitioner.

Mr. Avinash Kamkhedkar, APP, for Respondent No.1-State.

Adv Aparna Shinde, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED : 18th SEPTEMBER 2025

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 2nd August 2025, passed by the learned Additional Chief Judicial Magistrate, Kulra, Mumbai, whereby an application preferred by the Petitioner-Accused to examine the witnesses in his defence came to be rejected.
3. The learned Magistrate was of the view that out of the six witnesses proposed to be examined by the Petitioner-Accused, four witnesses appeared to be the then Superintendent of Customs, who might have retired. The Petitioner had not provided their current addresses. The Application was preferred with a view to further protract the trial in the case, which was filed prior to 15 years.

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4. The learned Counsel for the Petitioner submits that, the examination of the witnesses is necessary to demonstrate the innocence of the accused. The impugned order deprives the accused of his right to defend himself in the prosecution and would cause serious miscarriage of justice.

5. In opposition to this, the learned Counsel for the Respondent No.2-complainant submitted that, the complainant had fairly stated before the learned Magistrate that, the complainant has no objection to examine the defence witnesses provided relevancy of their evidence was shown. Since the accused failed to show the relevancy of the evidence of the witnesses proposed to be examined by him, the learned Magistrate was justified in passing the impugned order.

6. I have perused the impugned order and the material on record. Apart from the four Custom Officers, the Petitioner-accused intended to examine two Police Officers, who had taken part during the course of the investigation. One officer had filed a report recommending “B” Summary, and another officer has recorded the statement of the partner of “Federal Products”, a company that purchased material from “M/s Metal Concept India”, of which the complainant is the proprietor.

7. It is true the necessary particulars of the witnesses, especially the then Customs Superintendents, have not been furnished. It also does not appear that the during the course of the cross-examination of the

prosecution witnesses, any foundation was laid for the examination of those witnesses, as defence witnesses.

8. At the same time, the Court is required to be sensitive to the fact that, the accused must get an efficacious opportunity to defend himself by examining the witnesses. The accused cannot be precluded from examining the witnesses on the premise that, it would lead to the protraction of the trial, unless the Court comes to the conclusion that the examination of the proposed witnesses would be wholly irrelevant and the application is filed for the purpose of vexation and delay or for defeating the ends of justice.

9. In these circumstances, so far as the prayer to examine the two Police Officers, this Court does not find that there was any justifiable reason to deny the prayer to summon those witnesses. Therefore, at this stage, this Court considers it expedient in the interest of justice to permit the accused to examine Witness Nos. 5 and 6 as the defence witnesses and grant liberty to the Accused to file a fresh Application to summon the Customs officers by demonstrating the relevancy of the evidence which is sought to be adduced by examining those Customs Officers.

10. In that event, the learned Magistrate may decide the prayer for summoning those witnesses in accordance with law. Hence the following order:

: O R D E R :

- (i) The Petition stands partly allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The Application (Exhibit “118”) to examine Mr. Sanjay More, the Police Inspector, and Mr. M. Shaikh, the Assistant Police Inspector, stands allowed.
- (iv) The learned Magistrate shall summon the abovenamed witnesses as Defendants-witnesses.
- (v) After the examination of the above witnesses, the Petitioner-Accused will be at liberty to file a fresh Application to summon the Custom Officers with necessary particulars and clearly demonstrating the relevancy of the evidence sought to be adduced by examining the Custom officers.
- (vi) In the event such a fresh Application is filed, the learned Magistrate is requested to decide the said Application on its own merits and in accordance with law, after providing an opportunity of hearing to all the parties.
- (vii) Since the trial is already expedited, the learned Magistrate is requested to summon the defence witnesses expeditiously and the Petitioner-Accused shall not seek any adjournment for the purpose of examination of the said witnesses.

[N. J. JAMADAR, J.]