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IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1 OF 2025

1. Woodpeckers Movies Private Limited
6, Ashiyana, 13th Road, Next to Chand
Society, Vile Parle (West), Mumbai – 400 049.

2. Rajesh Laxmichand Bhatia
Age : 58
Director of Woodpeckers Movies Private
Limited
Having address : 6, Ashiyana, 13th Road,
Next to Chand Society, Vile Parle (West),
Mumbai – 400 049.
And also at 6, Purshottam Bhavan,
K.T. Marg, Next to Kamala Nehru Park,
Malabar Hill, Mumbai – 400 006.

3. Kiran Rajesh Bhatia
Age : 58
Director of Woodpeckers Movies Private
Limited
Having address : 6, Ashiyana, 13th Road,
Next to Chand Society, Vile Parle (West),
Mumbai – 400 049.
And also at 6, Purshottam Bhavan,
K.T. Marg, Next to Kamala Nehru Park,
Malabar Hill, Mumbai – 400 006.

...Applicants

Vs.

1. Prabhas Umashanker Pande
Hindu Indian Inhabitant, Aged 60 Years
Residing at : Flat No. 301, 3rd Floor,
Om-Akruti Co-operative Housing Society
Ltd., Plot No. 234, Shiva Ganga Nagar,
Ambernath (East) – 421 501,
Dist. - Thane.

2. State of Maharashtra
Through Ld. Public Prosecutor
for the State.

...Respondents

Dr. Abhinav Chandrachud a/w Mr.Darshan Patankar i/b Mr. Suraj R. Shukla	Advocate for the Applicants.
Mr. Jatin P. Karia (Shah) a/w Ms.Priyanka Sardagudda, Ms.Snehankita Munj, Ms. Shraddha Kamble and Mr. Vijay Andhale i/b D.M. Galani	Advocate for the Respondent No.1.
Smt. S.E. Phad	APP for the State.

CORAM : S. M. MODAK, J.
DATE : 20th AUGUST 2025

ORAL JUDGMENT :-

1. Heard Learned Advocate Dr. Chandrachud for the Applicants, Learned Advocate Mr. Karia (Shah) for Respondent No.1/Complainant and also Learned APP.

2. Learned Magistrate has passed certain orders in proceedings of C.C. No. 1262/SS/2022. Through arguments even Dr. Chandrachud has made grievance about those orders, what is challenged in this application is a correctness of the two orders. One is dated 30th January 2024 passed by the Trial Court and second is dated 14th

November 2024 passed by the Revisional Court. Vide order dated 30th January 2024 the Learned Magistrate has dispensed with cross-examination of C.W. No.1 – Prabhas Umashankar Pande who is Respondent No.1 whereas as per the order dated 14th November 2024 the Court of Additional Sessions Judge has dismissed the Revision Application. **The other orders which are referred by Dr. Chandrachud are as follows :**

- (i) The Order dated 16th March 2024 thereby dispensing with cross-examination of C.W. No. 2 – Harshad Vinod Vaidya – Bank witness.
- (ii) Issuance of Bailable Warrant for which Accused No.2 was required to attend the Court on wheel chair. This warrant was cancelled on 10th October 2024.
- (iii) Unwillingness on the part of Accused No.2 to record statement under Section 313 of the Code of Criminal Procedure, 1973 on 13th November 2024.
- (iv) Dispensing with recording of Section 313 Statement of the Accused on 11th June 2025.

3. According to Dr. Chandrachud if the first order is set aside by this Court, consequential orders passed by the Trial Court also needs to be set aside. To buttress his submissions he relied upon the observations in the case of *State of Kerala vs. Puthenkavu N.S.S. Karayogam and Another*¹ (Observations in Paragraph No.9). These submissions are disputed on behalf of Respondent No.1 for the reason the first order dated 30th January 2024 is a separate and independent order from other orders relating to dispensing with cross-examination of C.W. No.2. **I will deal with this aspect in later part of my order.**

ORDERS CHALLENGED

4. First of all, I will focus on the correctness of the two orders which are specifically challenged in this application. Both the sides were kind enough to assist the Court by giving **list of dates**. There are certain events which are not mentioned in the list of dates provided by Dr.Chandrachud. Those are referred in the compilation filed on behalf of Respondent No.1. It is no doubt true that the copies of cross-examination of the complainant recorded on various dates are annexed to this application. The only issue which arises in this application is

¹ (2001) 10 Supreme Court Cases 191

“whether both the Courts below are justified in refusing to recall Respondent No.1 for the purpose of conducting remaining cross-examination”.

5. According to Dr. Chandrachud there may be certain defects in the application moved before the Trial Court (Page No.126). Merely on the ground of improper prayer the request cannot be rejected whereas the emphasis of Mr. Karia is on vagueness of the particulars of that application. So to say there is no mention on which points the accused still wants to cross-examine Respondent No.1. There is also emphasis that this application which was filed on 9th May 2024 whereas cross-examination was dispensed with on 30th January 2024. There is emphasis on the subsequent conduct of the accused. So to say the accused have cross-examined C.W. No.3. This cross-examination was conducted on 23rd April 2024.

6. According to Dr.Chandrachud this subsequent conduct of his clients cannot be considered while deciding the correctness of the two orders. According to Dr. Chandrachud the prayer made on 9th May 2024 falls under both the parts of Section 311 of the Code of Criminal

Procedure, 1973 (“the Cr. P.C.”). He relied upon following two judgments :

- (a) *Pyarelal Lilaram Tagde vs. State of Maharashtra*² (Learned Single Judge has reproduced the observations by the Hon’ble Supreme Court in case of *Iddar vs. Aabida*³). The ratio is Section 311 of Cr. P.C. confers a very wide power on the Court to summon the witness and this discretion has to be exercised judiciously, as wider the power the greater is the necessity for application of judicial mind.

7. Whereas according to Mr. Karia the facts of the case in case of *Pyarelal Lilaram Tagde* (supra) are different. In that case the cross-examination which remained was only on the point of date of birth of a victim and application for recalling was filed within a short time after the order refusing cross-examination was passed.

RELEVANT FACTS

8. Certain facts which are relevant for deciding this controversy needs to be restated. **They are as follows :-**

- (a) The complaint is filed in the year 2022 by Respondent

² Criminal Revision Application No.7 of 2019

³ 2007 ALL MR (Cri) 2073

No.1 against Accused No.1/Company and Accused Nos.2 and 3 who were the Directors (Husband and Wife) for an offence under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (“the N.I. Act”) before the Court of then Metropolitan Magistrate, Sewri, 2nd. There are two cheques and total amount comes to Rs.1,24,00,000/-. Respondent No.1 has filed an affidavit of examination-in-chief and he was cross-examined earlier to passing of the impugned order on following dates :

- (i) 16th May 2023
- (ii) 30th June 2023
- (iii) 10th August 2023
- (iv) 6th September 2023
- (v) 18th September 2023 (It is recorded in question and answer form partly)
- (vi) 7th November 2023
- (vii) 7th December 2023 (This is the last occasion wherein Respondent No.1 was cross-examined).

9. Both the sides wants to rely upon the conduct of their rival parties in respect of recording of this cross-examination. According to Dr.Chandrachud no doubt the cross-examination by his client was conducted in a piecemeal manner but every time when the request was made for adjourning the cross-examination, it was consented on behalf of the complainant and also agreed by the Trial Court. He wants to justify the submissions for allowing the request about recalling Respondent No.1 mainly on the basis of endorsement put by the Learned Trial Court Judge on 7th December 2023 when the cross-examination was adjourned. **The endorsement is as follows :-**

“Learned advocate representing the accused submits that he would require further time for cross-examination. Hence, as per their request and consent of the witness and the learned advocate for the complainant further cross-examination is deferred in the interest of justice.”

DISPENSING CROSS-EXAMINATION

10. According to him, his client has conducted earlier cross-examination without seeking adjournment and particularly when on 7th December 2023 learned Advocate for complainant has consented for deferment, lacuna/short coming, if any in the application will not

come in his way. He invited my attention to the Roznama dated 30th January 2024 (Page No.94) where **the Learned Magistrate has recorded the following facts :**

(a) Accused was absent and filed exemption application.

Exemption granted with liberty to cross-examine the witness.

(b) Application was filed on behalf of the complainant for dispensing with the cross-examination of C.W. No.1. **It was allowed.**

(c) Application was filed by the complainant for issuance of Non Bailable Warrant. **Adjourned for order.**

ADJOURNED DATE

11. According to Dr. Chandrachud, Learned Advocate for his client could not conduct the remaining cross-examination on adjourned date, i.e., 30th January 2024 in view of the sad demise of mother of Petitioner No.2. He places reliance on following documents :

(a) The certificate issued by the local hospital certifying death of Pushpa on 20th January 2024 (Page No.128).

(b) Copy of entry taken by staff of B.M.C. about receiving information about death (He tendered across the bar copy of

entry which is taken on record and marked as Annexure “A”).

12. According to him, as mother has expired, Petitioner No.2 could not give necessary instructions to his Advocate and that is why adjournment was sought on 30th January 2024. He has criticized the conduct of Learned Magistrate while dispensing with the cross-examination and ought not to have been done considering the facts and circumstances. Whereas according to Mr.Karia in fact adjournment was not sought on account of the death of mother but it was sought because Learned Advocate for the accused Mr.Kanani was in difficulty and other Learned Advocate Mr. Jain was not ready to conduct the cross-examination. Learned Judge while passing the order on 30th January 2024 has rejected the said contentions. Learned Judge observed consistently exemption was granted to the accused (Page No.3 of the additional documents filed on behalf of Respondent No.1). There is also emphasis that altogether the accused has remained absent and still the cross-examination was conducted and hence death of mother cannot be justifiable ground.

CONDUCT OF THE ACCUSED

13. Learned Advocate for Respondent No.1 has brought to my notice the following instances to show the deliberate tactics played on behalf of the Petitioner. **They are as follows :**

- (a) The directions given by the Learned Magistrate dated 29th November 2022 to pay 20% of the cheque amount as per the provisions of Section 143A of the N.I. Act was not complied till today.
- (b) The Petitioners have not shown readiness to cross-examine another witness C.W. No.2 on 16th March 2024.
- (c) Disinclination to record 313 statement on the part of the Petitioners. It is recorded in the order dated 10th October 2024, 13th November 2024, 18th February 2025 (Bailable Warrant was issued against Accused No.3), not complied with the directions dated 11th June 2025 (Page No.17) and lastly dispensing with 313 Statement on 11th June 2025.

According to Dr. Chandrachud these instances are not relevant for deciding the present controversy.

CONSIDERATION

14. It is no doubt true that in the application dated 9th May 2024 the Petitioners have not pleaded on which points they want to conduct remaining cross-examination. It is the matter of record that this application was filed on 9th May 2024 even though the impugned order came to be passed on 30th January 2024. It is a matter of record that they have cross-examined C.W. No. 3 a Bank Witness.

FINDINGS

15. It will be material to consider the findings given by both the Courts below. The Learned Magistrate in the order dated 20th July 2024 has referred to the order in case of **Mr. Shankar Lotlikar vs. Mr.Pundalik Venktesh Verlekar**⁴. The Learned Magistrate has referred to those observations while rejecting the prayer. Learned Magistrate in Paragraph No.5 observed that the procedure laid down in Section 145 of the N.I. Act was not followed and still substantial cross-examination was conducted. There is no point in emphasizing on this aspect particularly when cross-examination was allowed earlier. Learned Magistrate observed “*exemption was granted on 30th January 2024 but*

4 Criminal Writ Petition No. 253 of 2019.

directions to conduct the cross-examination was not complied with”.

Whereas Learned Additional Sessions Judge in the order dated 14th November 2024 observed the order of refusing to recall the witness is not revisable as per the provisions of Section 397(2) of the Cr. P.C.

16. The judgments referred by the Learned Magistrate and by the Revisional Court are not made available for perusal. **It is no doubt true that Section 311 of the Cr. P.C. is in two parts.** The first part is directory whereas the second part is mandatory. As per the first part the Court can summon person as a witness or recall and re-examine any person already examined. There are no parameters laid down in Section which guides the Court when such power is to be exercised. Legislature wants to give a complete discretion to the Court. Whereas recalling has to be ordered if the evidence is essential to the just decision of the case.

17. If the above facts are considered one can say that the accused has cross-examined the complainant on several occasions. The cross-examination first started on 16th May 2023, however it could not be completed till 7th December 2023. It went on for more than seven

months. It is difficult for this Court to make any comment why such cross-examination was conducted in a piecemeal way which may also be due to the time available on a particular date with the Learned Magistrate. **This Court has to balance the rights of both the contesting parties. On one hand** we have got the complainant who is pursuing his complaint since 2022 and expecting his cross-examination to be conducted at the earliest. **On the other hand**, we have got accused who has cross-examined the complainant on several occasions and still they wants further cross-examination. It is true that Learned Single Judge in case of **Pyarelal Lilaram Tagde** (supra) has reproduced the observations by the Hon'ble Supreme Court in case of **Iddar vs. Aabida** (supra). The relevant observations are :

“the provisions of any widest possible terms and calls for no limitation either with regard to the stage at which the powers of the Court should be exercised or with regard to the manner in which it should be exercised”.

18. The Hon'ble Supreme Court has considered the purpose of conduct of trial. It is for the purpose of arriving at a truth by all lawful means and one of the way is to examine the witness. The purpose

inserted in Section 311 is to avoid injustice on account of mistake of either parties in bringing valuable evidence. **This Court feels that Learned Magistrate ought to have granted one opportunity to the Petitioners to complete the remaining cross-examination.**

19. Learned Magistrate has mixed up the two issues, one is the right to complete the remaining cross-examination and the dilatory tactics pleaded on behalf of the Petitioners. There are ways and means to control the dilatory tactics. Without resorting to such provisions it is not proper to close the remaining cross-examination. The accused has got right to cross-examine the complainant. There is principle which is recognised in criminal trial a person should not be convicted unheard.

20. Both the Court below have failed in accepting that request. Instead of emphasizing on what was the reason quoted before the Trial Court for adjourning the cross-examination on 30th January 2024, this Court feels one opportunity ought to have been granted to the Petitioners, because this is the only stage wherein the evidence can be adduced. This Court feels that there should not be a room available for the Petitioners to make a grievance about the denial of opportunity to

cross-examine if there is verdict against them. So I am inclined to allow the application. **However, this should not be unconditional.** There has to be condition to pay cost.

21. I have certainly considered all the submissions raised on behalf of Respondent No.1 about the conduct of the Petitioners in conducting cross-examination in a piecemeal manner and also filing the application after almost four months. All other instance of conduct pointed out on behalf of Respondent No.1 can be considered by the concerned Courts when the issue will be raised about the non compliance of certain orders. The amount of cheque is Rs.1,24,00,000/-, **I am inclined to impose cost of Rs.50,000/-.**

ABOUT OTHER ORDERS

22. **I have restricted the matter to prayers which are specifically made in the application.** I am not impressed by the arguments of Dr.Chandrachud that other orders are consequential in nature and needs to be set aside. The reason is the order closing cross-examination of C.W. No.2 is an independent order and there was no prayer made before the Trial Court and merits needs to be considered

independently. This is also true for the order dispensing with statement under Section 313 of the Cr. P.C. In view of that the following order is passed :

ORDER

- (i) Criminal Application No.1 of 2025 is allowed.
- (ii) The order dated 30th January 2024 passed by the Court of then Metropolitan Magistrate in C.C. No.1262/SS/2022 and the order dated 14th November 2024 passed by the Court of Additional Sessions Judge are hereby quashed and set aside subject to the following conditions :
 - (a) Petitioners/Applicants to deposit an amount of Rs.50,000/- (Rupees Fifty Thousand Only) before the Trial Court within one week from today and subject to deposit of amount, they are allowed to conduct remaining cross-examination of the complainant.
 - (b) If the amount is not deposited as aforesaid, the Trial Court is at liberty to proceed further.
 - (c) The submissions made by Learned Advocate Dr.Chandrachud that his client will complete the cross-examination within three hours is accepted.
- (iii) Amount of cost be paid to the complainant.
- (iv) The Trial Court to regulate the conduct of accused and even impose exemplary cost if cross-examination is not

conducted in time. Trial Court may also close the cross-examination.

23. With these observations, the Application is disposed of.

[S. M. MODAK, J.]