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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.376 OF 2025

Laxmikant Balaji Pathode,
Aged about: 44,
R/o: Plot no.53, New Diamond
Nagar, Ramna Maruti Nagar Road,
Nagpur – 440024.

.... PETITIONER

// VERSUS //

Sanjay Shriramji Pendharkar,
R/o: Plot No.559, Hiwari Lay out,
Opp. Big Bazzar, Nagpur.

.... RESPONDENT

Mr. A. A Bansod, Counsel for the petitioner.
Mr. N. G. Jetha, Counsel for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10.07.2025

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith.
2. Heard finally by the consent of the parties.
3. The present writ petition is preferred by the petitioner challenging the order passed by the learned 14th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nagpur rejecting the application of the present petitioner seeking permission to cross-examine the complainant and PW-2 by setting aside the no-cross order dated 07.01.2025 in SCC No.6898/2021.

(2)

4. The petitioner i.e. the original accused in SCC No. 6898/2021 pending before the learned 14th Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nagpur.

5. The brief facts which are necessary for the disposal of the petition are as under:

The respondent, who is the original complainant initiated the proceeding under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act'), alleging that a cheque which is issued against the discharge of legal and enforceable debt was dishonoured upon presentation with an endorsement of insufficient funds. After dishonoured of the cheque, the complainant issued a notice and after receipt of the notice also the present petitioner has not paid the amount and thereby committed an offence punishable under Section 138 of the N.I. Act. Hence, the complainant constrain to file a complaint under Section 138 of the N.I. Act. The process was issued against the present petitioner and present petitioner appeared through his Counsel. The plea was recorded and the respondent entered into a witness box and adduced his evidence. The complainant was present before the Court and since 17.11.2022 the matter was kept for the cross-examination. However, the learned Counsel for the present petitioner failed to cross-examine the witnesses and therefore, no-cross order was passed by the learned Additional Chief Judicial Magistrate.

(3)

Thereafter, he examined PW-2 and the statement of the present petitioner was also recorded under Section 313 of the Code of Criminal Procedure (for short 'the Cr.P.C.). Thereafter, the petitioner has filed an application below Exh.44 on 05.03.2024 for setting aside the no-cross order and permitting him to cross-examine the witness. By observing that the further chief-examination of the complainant was recorded on 17.11.2022 and since that time till filing of this application on 05.03.2024 accused had not taken efforts to cross-examine the complainant and his witnesses. It further reveals that the number of times arrest warrants were issued against the accused, as he remained absent and thereafter, the matter was kept for recording his statement under Section 313 of Cr.P.C. and with this reasons, the application of the present petitioner was rejected.

6. Heard learned Counsel for the petitioner, who submitted that the fair opportunity is not granted to the present petitioner and in the interest of justice, he be permitted to cross-examine the witness.

7. Learned Counsel for the respondent strongly opposed for the same and submitted that sufficient opportunity is already granted. The matter was for cross-examination since 17.11.2022 and first time the application was moved by the present petitioner on 05.03.2024. Prior to that, on several occasions, arrest warrants

(4)

were issued against the present petitioner. Thus, more than sufficient opportunity is granted to the present petitioner and hence, no case is made out for permitting the present petitioner to cross-examine the witness. In view of that, being the writ petition is devoid of merits and liable to be dismissed.

8. On hearing both sides and on perusal of the record, there is no dispute as to the fact that the complaint is filed by the respondent in the year 2021. After giving the appearance before the Court, the complainant has entered into the witness box on 17.11.2022. Despite sufficient opportunity till 05.03.2024 i.e. approximately for two years, the complainant and his witness were not cross-examined by the present petitioner. Thus, as far as the contention of the learned Counsel for the petitioner that fair chance is not given to the present petitioner, which is not sustainable. However, considering that the present petitioner is facing the criminal trial under Section 138 of the N.I. Act, and in the interest of justice and for the just decision of the case, the opportunity is required to be given to the present petitioner to cross-examine the witness by imposing certain conditions and by imposing certain costs. In view of that, I proceed to pass following order:

ORDER

- (i) The writ petition is allowed subject to the cost of Rs.5,000/- (Rs. Five Thousand) as the petitioner has dragged the respondent in unnecessary litigation. The cost is to be paid to the respondent.

(5)

(ii) The petitioner is permitted to recall the witnesses i.e. complainant and PW-2 and permitted to cross-examine both of them on a fixed date.

(iii) The petitioner shall cooperate to the trial Court in disposing the matter within one month after the cross-examination of these two witnesses is over.

(iv) The petitioner is directed to remain present before the trial Court on 14.08.2025 and shall cross-examine the complainant as well as the witness PW-2 and also submit his final submissions on that day.

(v) The Additional Chief Judicial Magistrate shall dispose of the matter within one month, after recording the cross-examination of these two witnesses.

Rule is made absolute in the above terms.

(URMILA JOSHI-PHALKE, J.)

Sarkate.