

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1303 OF 2026

Vijay Pandurang Waingade ..Petitioner

Versus

M/s. Titan Stainless India Pvt. Ltd. & anr. ...Respondents

Mr. Pravin Mengane a/w Mr. Mohan Kumbhar, for Petitioner.

Mr. Rajiv Hingu a/w Mr. Deepraj Shetye, for Respondent No. 1.

CORAM : N. J. JAMADAR, J.

DATE : 27th MARCH 2026

Oral Order :

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 11th December, 2025 passed by the learned Additional Sessions Judge in Criminal Revision application No. 766/2024 whereby the revision application preferred by the petitioner/accused against an order passed by the learned Magistrate on 18th July 2024 thereby rejecting an application preferred by the petitioner to set aside the no cross-examination order dated 07th February, 2024, came to be dismissed.
3. The petitioner is facing prosecution for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the N. I. Act, 1881').

4. On 07th February, 2024, neither the petitioner nor his Advocate appeared before the learned Magistrate. Thus, the learned Magistrate passed the following order:-

“The witness is present. The accused is absent. None appeared on behalf of the accused. Matter is posted for cross-examination. However, cross-examination on behalf of accused is not being conducted. Hence, no cross order is passed against accused.”

5. The petitioner appeared before the Court and filed an application to set aside the said order. On 16th March, 2024, it was *inter alia* contended that, the Advocate for the accused was engaged in a proceeding before the High Court and, therefore, he could not appear before the trial Court and the accused also could not appear before the Court, as he was unwell. It was further contended that, the accused was residing at Palus; 400 km away from Mumbai.

6. The application was resisted by the complainant. By an order dated 18th July, 2024, the learned Magistrate set aside the said order observing *inter alia* that, the accused had not made out a case under Section 145(2) of the N. I. Act, 1881, to permit him to cross-examine the complainant. Reliance was placed by

the learned Magistrate on a judgment of this Court in the case of *Somnath Sharad Mandrekar Vs. Patricia Reiter*¹.

7. The revision application preferred by the petitioner-accused against the said order met the same fate.

8. Mr. Mengane, the learned Counsel for the petitioner, submitted that, on account of genuine reasons, the petitioner/accused could not appear before the Court and cross-examine the complainant. The accused had also filed an application seeking permission to cross-examine the complainant under Section 145(2) of the N. I. Act, 1881. The accused has a substantial defence to the prosecution. Therefore, the accused be provided an opportunity to cross-examine the complainant lest the accused would suffer grave prejudice.

9. In opposition to this, Mr. Hingu, the learned Counsel for the Respondent/Complainant, would urge that, the Courts below have correctly exercised the jurisdiction not to permit the petitioner to cross-examine the complainant. It was submitted that, the complaint was filed in the year 2019. The accused did not cross-examine the complainant till the year 2024, and, therefore, the learned Magistrate was constrained to pass “no-cross order”.

1 2023 SCC OnLine Bom 3303

10. In any event, the learned Counsel for the respondent would urge that, the accused cannot seek permission to cross-examine the complainant as a matter of right unless a specific defence is disclosed under Section 145(2) of the N. I. Act, 1881. Reliance was placed on a judgment of the Supreme Court in the case *Meters & Instruments Pvt. Ltd. & anr. Vs. Kanchan Mehta*². In the said case while delineating the practice to be adopted for expeditious conclusion of the trials for an offence punishable under Section 138 of the N. I. Act, 1881, the Supreme Court *inter alia* observed that, the accused, who wants to contest the case, must be required to disclose specific defence for such contest. It would also be open to the Court to ask specific questions to accused at that stage.

11. Following the aforesaid pronouncement, in the case of *Somnath Mandrekar Vs. Patricia Reiter (supra)*, this Court had repelled the prayer of the accused therein to cross-examine the complainant as the Court had found that, the accused had not set out any defence at all.

12. I have perused the material on record. First and foremost, it is necessary to note that, the learned Magistrate was not exercising the jurisdiction whether to allow the

2 (2018) 1 SCC 650

petitioner/accused to cross-examine the complainant in terms of the provisions contained in Section 145(2) of the N. I. Act, 1881.

13. On the contrary, in the order dated 07th February 2024, the learned Magistrate has recorded that, the matter was posted for cross-examination and, since cross-examination was not conducted on behalf of the accused, “no-cross order” was passed against the accused. In that view of the matter, the applications to recall the order of “no-cross” could not have been rejected, on the ground that, the accused had not made out a case for exercise of the right of cross-examination. The learned Magistrate ought to have examined the justifiability of the reasons ascribed by the accused for his inability to cross-examine the complainant on 07th February, 2024. Instead, the learned Magistrate proceeded to consider whether the accused had disclosed a specific defence.

14. At any rate, the Court cannot lose sight of the fact that, the cross-examination is a valuable right of an accused, nay, a fundamental facet of a fair judicial process which is guaranteed under Article 21 of the Constitution of India. The Court can not be oblivious to the consequences that inevitably ensue, in the event, the right of cross-examination is unjustifiably denied.

15. In the case at hand, it does not appear that, the learned Magistrate had followed the directions of the Supreme Court and asked specific questions to the accused, to ascertain whether the accused has a defence to make for the purpose of permitting the accused to cross-examine the complainant.

16. On balance, the Court finds that, the reasons ascribed by the petitioner in the application to set aside the “no-cross order” were sustainable. The learned Magistrate as well as the learned Additional Sessions Judge have adopted a hyper-technical view of the matter. Therefore, the impugned order cannot be sustained. Hence, the petition deserves to be allowed.

17. Thus, the following order:-

:: O R D E R ::

- i) The Writ Petition stands allowed.
- ii) The impugned order as well as the orders passed by the learned Magistrate on 18th July, 2024 and 07th February, 2024 stand quashed and set aside.
- iii) The petitioner/accused is permitted to cross-examine the complainant.
- iv) The petitioner/accused shall cross-examine the complainant on the next

scheduled date without fail and as far as possible the cross-examination be concluded in one session.

iv) The petitioner/accused shall pay costs of Rs. 5,000/- to the Respondent No. 2/Complainant within a period of one week from the date of uploading of this order.

[N. J. JAMADAR, J.]