

**Order below Exh.36 in C.C. No.905/SS/2020**

This is an application filed by the accused for setting aside no cross order dated 15/04/2023.

02. The accused contended that on 15/04/2023 when the matter was called he arrived late and no cross order is passed against him. The cross-examination of complainant is essential tool to elicit the truth that helps in checking the veracity of the complainant. Hence, accused filed present application and prayed for allow of the application.

03. The complainant has resisted the application by filing say vide Exh.37 and denied the application. The complainant contended that on 15/04/2023 neither accused nor his advocate was present. Therefore, no cross order was passed. After no cross order was passed, the date was fixed on 13/06/2023 and accused has filed present application. However, the accused has not made out any appropriate and justifiable reason. The accused has just contended that he reached late and no cross order was passed. However, the accused has intentionally delayed the matter. Hence, complainant prayed for rejection of the application with heavy cost.

04. I have heard learned advocates for the accused and complainant. The learned advocate for accused contended that on 15/04/2023 when the accused arrived, the matter was already called out and no cross order was passed. The cross-examination of the complainant is necessary to elicit the truth that helps in checking the veracity of the complainant, fair opportunity to be given to the accused. Hence, he prayed for allow of the application.

05. On the contrary, learned advocate for complainant submitted that the accused and his learned advocate were not present on 15/04/2023 when matter was posted for cross-examination. The accused is delaying the trial. The accused has not made any justifiable reason for setting aside no cross order. Hence, he prayed for rejection of application with heavy cost.

06. On perusal of the proceeding, it is seen that, after recording plea of the accused, the complainant filed application u/s. Section 143-A of N.I. Act vide Exh.26 on 13/06/2022 and it is decided on 13/03/2023. Thereafter, date was fixed on 15/04/2023 for cross-examination. However, when the matter was called out the accused and his advocate both were absent and therefore, no cross order was passed.

07. However, considering fact that cross-examination of PW1 is not conducted and in order to decide the trial on merits one opportunity is required to be given to the accused. If such opportunity is given, the complainant will not be suffered. On the contrary, it will be adjudication on the merits.

08. However, the accused was not diligent to proceed with the cross-examination and therefore, the accused is liable for cost by which the complainant can be compensated. Accordingly, I proceed to pass following order.

### **ORDER**

1. The application is allowed subject to cost of Rs.10,000/-(Rs. Ten Thousand Only) and subject to following conditions the accused is permitted to conduct cross-examination of the complainant.
  - (i) The accused shall conduct cross-examination of the complainant on the fixed date.

- (ii) The accused shall not cause any delay or seek any adjournment for the cross-examination.
  - (iii) Any delay in conducting cross-examination on the part of the accused will give rise to forfeit the rights of cross-examination of the accused and the accused will not get further opportunity of the cross-examination.
- 2. The cost shall be paid to the complainant.
  - 3. Dictated and pronounced in open court.

Date : 21.11.2023

Sd/-  
( A.S. Tekale )  
Metropolitan Magistrate,  
14<sup>th</sup> Court, Girgaon, Mumbai.

KCK