

ORDER BELOW EXH.24 IN C.C.NO.1939/SS/2019

This is an application filed by accused seeking permission cross-examine the complainant vide Section 145(2) of Negotiable Instruments Act, 1881 (*In short 'N. I. Act'*).

02. The accused contended that he is intending to cross-examine the complainant to defend the case of the complainant. He will suffer, if opportunity is not given to cross-examine the complainant. Hence, the accused has filed present application and prayed for allow of the application.

03. The complainant has filed say overleaf vide Exh.24 and contended that application may be allowed subject to cost.

04. I have heard learned advocates for the accused and the complainant. They have argued in the line of their respective contentions.

05. On perusal of the application, the accused merely contended that he wants to cross-examine the complainant to defend the case. However, the application is silent in respect of any reason or defence of the accused.

06. In this regard reference is required to be made to the authority of **Hon'ble Bombay High Court** in the case of **Mr. Somnath Sharad Mandrekar vs Ms. Patricia Reiter, in Criminal Writ Petition No.90 of 2023 decided on 28/02/2023** wherein it is laid down that, application filed by the accused under section 145(2) of Negotiable Instruments Act, 1881 sets out absolutely no defence at all. The application merely states that the accused wants to cross examine complainant for defending herself in the complaint filed against her under section 138 Negotiable Instruments Act, 1881. Completely ignoring

the law laid down by Hon'ble Supreme Court as well as this court, the JMFC allowed the application of the accused, to cross examine the complainant and his witnesses, in view of the so-called substance of the defence set out in the application. There is no defence whatsoever stated in the application and therefore, order passed by JMFC suffers from an error on the face of the record.

07. In the present case also, the accused has not made out any specific reason or defence to show he has grounds for cross-examination. The application is lacking grounds of cross-examination or defence of the accused. Thus, the accused has failed to make out grounds for permitting the cross-examination. Hence, application is liable to be rejected. Accordingly, I proceed to pass following order :-

ORDER

1. The application is rejected.
2. Dictated and pronounced in open court.

Date : 29.01.2025
KCK/-

(A.S. Tekale)
Metropolitan Magistrate
14th Court, Girgaon, Mumbai.