

ORDER BELOW EXH. 33 IN C.C.NO. 1539/SS/2019

01. This is an application filed by accused seeking permission to cross-examine the complainant vide Section 311 of the Code of Criminal Procedure, 1973 (*In short 'Cr.P.C.'*).

02. The accused contended that, she has not conducted the cross-examination of the complainant. Therefore, accused should get an opportunity for cross-examination. If the cross-examination is conducted, accused would get an opportunity to put-forth her defence. Hence, the accused filed present application and prayed for allow of the application.

03. The complainant has resisted the application by filing say vide Exh.35 and denied the application. The complainant contended that the application is filed by the accused is vague and without sufficient cause. The application does not disclose any defence or probable cause for recalling the witness. The application is filed only to delay the trial and prayed for rejection of the application.

04. I have heard learned advocates for the accused and the complainant. Learned advocate for accused submitted that, the accused has not conducted cross-examination of the complainant. Therefore, accused should get an opportunity of cross-examination. If accused is permitted to cross-examination, the accused can put-forth defence. Hence, he prayed for allow of the application.

05. On the contrary, the learned advocate for complainant submitted that the application does not disclose any defence or reasons for the cross-examination. The application is vague and it is filed to

delay the trial. Hence, he prayed for rejection of the application.

06. On perusal of the application, the accused merely contended that accused should get an opportunity of cross-examination. However, the accused has not mentioned any defence or disclosed defence in the application. Therefore, the application is silent in respect of any reason or defence of the accused.

07. 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.

08. 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 : 19.04.2025
KCK/-

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