

ORDER BELOW EXH.34

1. This is an application moved by accused for setting aside 'no-cross' order dated 28/06/2023.

2. **Brief contentions in the application are as under:**

The matter was listed as part heard on 28/06/2023. On 15/12/2022 advocate on record was not able to attend the matter due to heavy rain fall in the vicinity of Ulhasnagar and Ambarnath. Accused want to contest the matter as he is having good defence. Hence, he prayed to allow the application and set aside 'no-cross' order passed against him.

3. Complainant has filed his say at (Exh.37) stating that accused is intentionally prolonging the proceeding. It is next submitted that if accused is not ready with the matter on same day, then the court may dismiss the application with compensatory cost.

4. Heard advocate for both sides at length.

5. Perused record. It appears that examination-in-chief of C.W.1 is filed on record on 11/11/2019. Process was issued against accused on 26/12/2018. Order of exhibiting document is passed on 15/01/2020. Since then it was pending for cross-examination of C.W.1 but accused was absent. Therefore, on 28/06/2023 an order was passed and matter was proceeded without cross-examination of C.W.1.

6. Considering the grounds mentioned in the application and say given by complainant, interest of justice requires that accused may be given last opportunity to cross-examine the complainant. Simultaneously, it cannot be ignored that there has been delay in the trial of complaint due to accused, so some cost is necessary to be saddled on him. In the result, I pass following order :

ORDER

1. Application is allowed.
2. No-cross order passed on 28/06/2023 against accused is set aside on payment of cost of Rs.2,000/- (Rupees Two Thousand Only) by him to the complainant.
3. Complainant be recalled for cross-examination on payment of cost amount by accused.

Sd/-

(Shri. R.D. Dange)

Metropolitan Magistrate,
63rd Court, Andheri, Mumbai

Date : 29/02/2024