

IN THE COURT OF METROPOLITAN MAGISTRATE

28TH COURT, ESPLANADE, MUMBAI.

ORDER BELOW EX No.34

1. This is an application made by accused with the prayer that he may be permitted to take cross examination of the complainant.

2. It is averred in the application that total seven cases are filed against the accused. However, in each case there is different complainant, different cheque and demand notice. This court misunderstood the submission of accused regarding adoption of the cross recorded in first matter. It was made only to avoid multiplicity of the questions and answers. But accused has not relinquished his right of cross examination.

3. Application is opposed by complainant vide say Ex No.35 wherein it is averred that only on the submission of learned advocate for the accused, it was done. So, now he cannot resile from his statement. On this background complainant has prayed that application be rejected.

4. Heard both sides. Both are unanimous on the fact that on the submission of learned advocate for the accused only, cross examination taken in first matter is adopted in rest of matters. They have also agreed that fact of difference of cheque numbers and other dates were not brought to the notice of the court while adopting cross examination. It is not even the case of accused in the present application that particular portion of the cross examination was adopted and requested to be taken in another matters. In absence of these precautions, which was supposed to be taken by accused before making submission before the court, it cannot be said that court has mistaken the submission. So, I don't find substance in the averments made to that effect. But a fact remains the

same that different cheques and demand notices are involved on each matter. Complainants are different in each case. So accused is needed to be permitted to meet the ends of justice. However, heavy cost is necessary imposed on the accused. Because, matters are old one. Due to this negligence of the accused considerable time of court as well as of other side has been wasted. Hence, order:

ORDER

- i. Application is allowed.
- ii. Complainant (P.W.No.1) is hereby recalled for cross- examination u/Sec.311 of Cr.P.C. on the conditions of payment of costs of Rs.5,000/- (Rs. Five Thousand Only) to be paid by accused to the other side on or before next date.
- iii. Accused to take note that in case of default in payment of costs as aforesaid, order will vacate automatically.
- iv. After payment of costs, accused to take cross-examination on same day and no further adjournment will be granted.

Date : 16/01/2020

(Ketaki M. Chavan)
Metropolitan Magistrate,
28th Court, Esplanade, Mumbai.