

STCC No.3032/2017  
Dharmaraj Vs. Nilesh .  
{MHILA030040252021}

**Order Passed below Exh.65**

The present application is filed by accused for setting aside No Cross order passed below Exh.19 against him on 17.04.2023.

**02.** Accused prayed to set a side no cross order passed against him relying on ground that to give fair opportunity to accused he prayed to set-aside the order passed below Exh.19 on 17.04.2023..

**03.** Complainant has resisted the said application by filing his say overleaf the application. He stated that on 21.10.2021 no cross order passed against him was set-aside subject to costs of Rs.2000/- and on 14.11.2022 no cross order was set-aside subject to costs of Rs.1000/-. Accused deliberately delaying the proceeding. Hence, it is prayed to reject the application with costs of Rs.10,000/-.

**04.** Heard Ld. Advocate for accused and complainant. I have perused proceedings and roznama thereto. On perusal of roznama it appears that, on 13.03.2023 no-cross order dated 14.11.2022. was set-aside by predecessor of this court subject to costs of Rs.1000/-. Said cost was paid by accused. Subsequently, on 17.04.2023 again no cross order was passed against him.

05. This is proceeding under section 138 of N.I.Act. This case is five year old on 30.10.2018 complainant has filed his affidavit in live of examination-in-chief. On 01.02.2022 and 13.03.2023 twice by setting aside no cross order against accused opportunities are given. Indeed due to conduct of accused delay has been caused. But in view of principle of natural justice opportunity shall be given to accused. Considering record of the case and circumstances it is just and proper to give one last opportunity to the accused to cross examine complainant which will not prejudice to right of complainant.

06. However, if the conduct of accused is taken into consideration, even if in the interest of justice accused is entitled to receive the opportunity to conduct cross examination of complainant but the delay caused in the proceeding and hardship caused to complainant shall not be ignored. Therefore, it will be just and proper to give opportunity to accused for cross examining complainant subject to compensate witness with cost. Therefore, this application deserves to be allowed subject to payment of cost of Rs. 3000/- (Three Thousand Only) to applicant. In turn, I pass following order.

### **ORDER**

1. Application vide Exh.65 is allowed Subject to cost of

Rs. 3000/- (Three Thoudsand Only) payable to complainant on or before next date without fail.

2. Failure to pay cost to applicant on next date no cross order against accused shall be passed.
3. After payment of cost on next date accused is directed to conduct cross examination of complainant on same day.

Place : Latur.  
Date : 21.07.2023.

(A.A Peerjade Patil )  
Judicial Magistrate, F.C.,  
(Court No.5), Latur.