

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 359 OF 2023

Rajeshwar Hi-Tech Printers, A Partnership firm, Akola and Others

..VS..

M/s Kamalkishor Girdharilal Sharma through its Manager, Shri Purushottam S/o
Kamalkishor Sharma

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

None for the Applicants.

Mr. D.R. Goenka, Advocate for Non-applicant.

CORAM : G.A. SANAP, J.

DATED : 03rd APRIL, 2023

Applicants are absent. Advocate for the
applicants is also absent.

2. Heard the learned Advocate Mr. D.R. Goenka,
who appears on behalf of the non-applicant.

3. In this criminal application challenge is to the
order dated 02.01.2023 whereby the application made
by the applicants for granting time to record their
statements under Section 313 of the Code of Criminal
Procedure (hereinafter referred to as "the Cr.P.C.") was
rejected. In the revision filed by the applicants
challenging the said order passed by the learned
Magistrate was confirmed and the revision was dismissed
by order dated 08.02.2023.

4. Learned Advocate for the non-applicant submits that statements of accused Nos.1 and 2 under Section 313 of the Cr.P.C. was recorded on 13.01.2023 and the statement of accused No.3 under Section 313 of the Cr.P.C. was recorded on 16.01.2023. Learned Advocate further submits that this application was filed on 03.03.2023. Learned Advocate further submits that on the date of filing of this application, the statements of the accused under Section 313 of the Cr.P.C. were already recorded. It is pointed out, that this fact was not disclosed in the application. It is submitted that the applicants are guilty of suppression of material facts. It is further submitted that unnecessarily the non-applicant has been denied the fruits of the proceeding filed under Section 138 of the Negotiable Instruments Act, 1881. Learned Advocate for the non-applicant, therefore, submits that exemplary cost be awarded.

5. It is to be noted that after rejection of the application for postponing the recording of the statement under Section 313 of the Cr.P.C., learned Magistrate recorded the statement of the accused persons under Section 313 of the Cr.P.C. It is seen that this fact was not brought to the notice of the learned Sessions Judge in the revision, while challenging the said order. Similarly, this fact has not been disclosed in the present application. Therefore, *prima facie*, it appears that the applicants with *mala fide* intention suppressed this fact from the Court. The non-applicant has been made to appear in this proceeding which had become infructuous on the date of its filing.

6. In the facts and circumstances, I am of the view that there is substance in the submission advanced by the learned Advocate for the non-applicant.

7. Accordingly, the application is dismissed.

The applicants are directed to pay cost of Rs.10,000/- (Rs. Ten thousand only) jointly and severally to the non-applicant. The cost be deposited before the trial Court within a period of three weeks from today.

After deposit of cost by the applicants, the non-applicant is permitted to withdraw the same.

(G.A. SANAP, J.)

Kirtak