



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.271 OF 2024

[Harish S/o Laxmandas Parvani ..Vs.. Dhun Sales Corporation]

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

Court's or Judge's order

Mr N. R. Tekade, Advocate for Applicant.
Mr S. A. Mohta, Advocate for Non-Applicant.

CORAM : M. W. CHANDWANI, J.

DATE : 16th APRIL, 2024.

. Heard.

2. It is not necessary to go into the matrix of the present case in detail, it will suffice to say that the non-applicant/complainant has filed a complaint as Summary Criminal Case No.5513 of 2018 against the applicant for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the N.I. Act”), on the allegation that the cheque, which was issued by the applicant, got dishonoured and in-spite of notice, the applicant failed to pay the amount of Rs.5,00,000/-. The non-applicant has examined himself and in cross-examination, he has admitted that the applicant has deposited an amount of Rs.2,82,000/- as well as Rs.2,83,000/- in his account through NEFT. After the cross examination was over, the applicant, who was in jail, applied for bail. In the reply filed by the non-applicant to the bail application, it is mentioned by him that the amount of Rs.2,82,000/- and Rs.2,83,000/- are credited in his account

in respect of other transaction for which, another criminal complaint bearing Summary Criminal Case No.2925 of 2019, for offence punishable under Section 138 of the N.I. Act, is pending before the learned Chief Judicial Magistrate, Akola.

3. In view of this statement, the applicant made an application bearing Summary Criminal Case No.1513 of 2018, before the learned Trial Court for recalling the witness i.e. complainant for cross-examination, who disputed the credit of amount of Rs.2,82,000/- and Rs.2,83,000/- in his account towards repayment of the amount in Summary Criminal Case No.5513 of 2018. However, the learned Trial Court has rejected the application. Hence, the present application came to be filed.

4. Heard Mr Tekade, learned counsel for applicant as well as Mr Mohta, learned counsel for non-applicant. I have gone through the impugned order as well as cross-examination and reply of the non-applicant.

5. Perusal of the record shows that the non-applicant has admitted the credit of amount of Rs.2,82,000/- and Rs.2,83,000/- in his account in his cross-examination. However, in reply to the bail application, he has put a rider that these amounts have been received by him towards another transaction in Summary Criminal Case No.2925 of 2019 and not in Summary Criminal Case No.5513 of 2018. Therefore, to decide this issue whether the amount has been

repaid towards transaction, which is in question in Summary Criminal Case No.5513 of 2018, it is necessary to give an opportunity to the applicant, as well as for just decision of the case, as contemplated under Section 311 of the Code of Criminal Procedure, 1973, recall of the complainant is necessary. This aspect has not been considered by the learned Trial Court. Hence, the impugned order dated 24.01.2024 is set aside. The criminal application is **allowed** and disposed of, in above terms.

6. It is made clear that the Trial Court shall not grant any adjournment, unless the sufficient reason is shown.

(JUDGE)