



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 974 OF 2025

Seema Ganesh Suryawanshi .. Applicant

VERSUS

Mahesh s/o. Chimaji Waghmare .. Respondent

Mr. Praveen B. Waghmare, Advocate for the applicant.

Mr. B.V. Virdhe, Advocate for sole respondent.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 14.07.2025
PRONOUNCED ON : 31.07.2025

O R D E R :-

01. Present Criminal Application is filed praying for quashing and setting aside impugned order issuing process by the learned 8th Judicial Magistrate, First Class, Beed dated 06.07.2023 in SCC No. 909 of 2023. Prayer is made for quashment of warrant dated 10.07.2024 and the entire complaint. The application is filed by original accused in a case under section 138 of the Negotiable Instruments Act. The respondent is a complainant in the said case.

02. Heard learned Advocates for the parties. The application is taken up for final disposal by the consent of the parties.

03. The respondent filed a complaint stating that the applicant and the respondent know each other. The applicant took hand-loan of Rs. 9 lakhs from the respondent. Towards discharge of this liability, the applicant gave a cheque on 31.12.2022 for an amount of Rs. 9 lakhs. On presentation of said cheque, same was dishonoured with an endorsement "payment stopped by drawer". In spite of demand notice, the applicant could not pay the amount therefore, the respondent filed a complaint. The learned Trial Court recorded verification, gone through the documents placed on record and heard learned Advocate for the complainant. It is on that the learned Trial Court passed an order issuing process. The applicant is, thus, before this Court.

04. The learned Advocate Mr. Waghmare for the petitioner vehemently argued that the Trial Judge did not hold any enquiry. No investigation was directed. The learned Magistrate without undertaking such exercise has directly issued process only on affidavit-in-leu of verification. He, thus, submits that the order suffers from non-application of mind and same deserves to be quashed and set aside.

05. Learned Advocate Mr. Virdhe for the respondent vehemently

opposes the application. He submits that in the present case the order is speaking order. It is seen from the order that the learned Court has considered affidavit-in-leu of verification. The documents on record are also seen. The satisfaction of the Court is clearly seen from the order. The learned Advocate for the complainant was also heard. The Trial Court has further recorded that the accused has issued disputed cheque towards discharge of legal debt or liability. The cheque was presented in stipulated time. The demand notice is also issued within one month from the return of cheque. All these things clearly show that the learned Judge has applied his mind and it is only thereafter the notice is issued. He submits relying on the judgment in the case of **In Re : Expeditious Trial of Cases under Section 138 of N.I. Act, 1881 Vs. Case No. Suo Motu Writ Petition (Cri.) No. 2 of 2020, reported in 2021 AIR (SC) 1957**, that the form of verification and the manner of enquiry is not prescribed under the Act. He submits that by now it is established that the order of issuance of process should show application of mind. He thus prays for rejection of the application. He relies upon following judgments :-

- (i) A.C.Narayanan Vs.State of Maharashtra,2014(1)AIRBomR(Cri)302.
- (ii) Annapurna Nayak Vs.Gyan Chand Varshey, 2008 BCR 253.
- (iii) V.K. Jain Vs. Pratap P. Padode, 2005(3) MhLJ 778.

. There is no dispute about the propositions in the above referred cases. The judgments are squarely applicable to the present case.

06. This Court has gone through the order passed by the learned Magistrate. It clearly shows that the Trial Court has applied its mind and it is only thereafter the process is issued. So far as judgment in the case of **Expeditious Trial (supra)** is concerned, in para No.24 the Hon'ble Apex Court clearly recorded the conclusions as follows :-

"24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) x x x x "

07. Looking to clause (3) of the above reproduced para, it is clear that the Court while issuing notice can consider evidence of witnesses in enquiry under section 202 of the Criminal Procedure Code. It is even permissible for the Court to restrict the enquiry to examination of documents without insisting for examination of the witnesses.

08. Considering all above, in the present case, this Court is satisfied that the learned Trial Court has rightly passed order of issuance of process. No illegality or perversity is pointed out in the impugned order. This Court does not find any reason to cause interference while exercising powers under section 482 of the Cr.P.C.

09. The Criminal Application, therefore, stands dismissed.

[KISHORE C. SANT, J.]