



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

68 CRIMINAL WRIT PETITION NO. 952 OF 2025

VIJAYKUMAR RAMCHANDRAJI SOMANI
VERSUS
PURUSHOTTAM GANGABHISHANJI AGRAWAL

Mr. M.D.Shinde, Advocate for the petitioner.
Mr. F.K. Patel, Advocate for sole respondent.

CORAM : KISHORE C. SANT, J.
DATE : 18.08.2025

PC :-

01. Heard. This petition is filed by the original accused in a case under section 138 of the Negotiable Instruments Act. The evidence in the Trial Court was over in the year 2020. Statement of the accused under section 313 of the Cr.P.C. was recorded on 15.02.2020. Thereafter, the matter was adjourned from time to time. No evidence could be produced by the accused. The evidence thereafter closed by order dated 10.12.2024. Thereafter, the petitioner filed application to re-open the evidence. At that stage the matter was reserved for judgment. Now, said matter is again de-reserved as the learned Presiding Officer is transferred.

02. The petitioner thereafter filed an application on 25.02.2025.

The learned JMFC, however, rejected the said application by the impugned order stating that the case is very old. Sufficient opportunity to the accused to lead evidence was given. In spite of that the accused failed to lead evidence and the evidence was closed. The Trial Court considered that no sufficient reason is given by the accused and rejected the application.

03. The learned Advocate for the petitioner vehemently argued that the right of the accused to have fair trial is seriously prejudiced. If the accused is not permitted to lead evidence, it would be depriving him of a fair chance. He submits that the documents are already on record, which he wants to prove by way of evidence. One of the witnesses is a Bank manager. Another witness is a private person, who was present at the time of alleged transaction. He thus submits that both the witnesses are necessary to be examined and opportunity be given to the accused. He submits that in view of the order passed by this Court, the petitioner has already deposited an amount of Rs. 50,000/- in the office of this Court to show bona fides. He, thus, prays for allowing the petition.

04. The learned Advocate for the complainant vehemently opposes the application. He submits from the dates that it is clear that

the petitioner is not prosecuting the complaint diligently and giving evidence. It is for his fault that the evidence is closed. He thus pays for rejection of the petition.

05. After hearing the parties, it is seen that there is huge gap between recording 313 statement of the accused and order of "No evidence". However, thereafter, within a month, an application is filed by the accused, seeking permission to re-open the evidence. No doubt it is right of the accused to have fair trial and to get opportunity to lead his evidence. In the present case, it is the accused himself who is to be blamed for not taking steps and giving evidence for almost four years after recording of the statement under section 313 of the Cr.P.C. However, in the interest of justice, since he has already deposited an amount of Rs.50,000/- to show bona fides, this Court is inclined to allow this petition. Hence, following order :-

- i) This Criminal Writ Petition is allowed.
- ii) The impugned order dated 19.04.2025 passed below Exh.98 in SCC No. 3259 of 2015 by learned 8th Judicial Magistrate, First Class, Latur, is quashed and set aside. The application Exh. 98 is allowed.

- iii) The amount of Rs. 50,000/- deposited in this Court shall be transferred to the Trial Court.
- . Out of said amount, the Trial Court shall allow the respondent to withdraw an amount of Rs. 25,000/-.
 - . In respect of remaining amount of Rs. 25,000/- the Trial Court shall pass appropriate orders at the time of conclusion of the proceeding under Section 138 of the NI Act.
- iv) The Trial Court is requested to complete the trial by end of 30th November, 2025. The accused shall not seek adjournment.

[KISHORE C. SANT, J.]