



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

CRIMINAL WRIT PETITION NO. 1642 OF 2025

Shivay Enterprises,
Through Latabai W/o. Sitaram Chavan,
Age: 57 Yrs, Occ: Household,
R/o: Behind Sayali Kirana Shop,
Sudhakarnagar, Chhatrapati Sambhajinagar,
Tq. & Dist. Chhatrapati Sambhajinagar.

...Petitioner

Versus

Aaditya S/o. Uttam Rathod,
Age: 36 Yrs, Occ: Advocate,
R/o. A-10, Amrut Sai Sara City,
Nakshatrawadi, Chhatrapati Sambhajinagar,
Tq. & Dist. Chhatrapati Sambhajinagar.

...Respondent

...

Advocate for Petitioner : Mr. Gore Ravindra Vitthal

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**CORAM : ABHAY J. MANTRI, J.
DATE : 28th NOVEMBER, 2025**

ORAL JUDGMENT :

1. By this petition, the petitioner is challenging the order dated 15.11.2025, passed by learned JMFC, Paithan, below exhibit 69 in SCC No. 1201/2022, whereby the application filed by the accused for setting aside the evidence close order dated 27.10.2025 was rejected, and the petitioner has preferred this petition.
3. The thrust of the argument of the learned Advocate for the petitioner is that the learned Trial Court has not granted an opportunity

to the petitioner to raise her defence before the Trial Court and thereby, the Trial Court has denied the opportunity to conduct a fair trial, and as such, he has prayed for setting aside the said order.

4. I have gone through the record. I would like to mention the following facts :

- i. On **12.09.2022**, a proceeding under Section 138 of the Negotiable Instruments Act was filed by the respondent, and the affidavit of evidence was filed.
- ii. On **16.09.2022**, the issuance of the process order was passed.
- iii. Respondent's cross-examination was commenced on **17.04.2023** and concluded on **31.07.2023**.
- iv. Then, the complainant also examined one witness whose evidence was concluded on **23.01.2024**.
- v. On **07.08.2024**, the statement of the accused was recorded under Section 313 of the Cr. P. C.
- vi. On **08.09.2025**, the petitioner examined herself and concluded her evidence on the same date. Petitioner filed an application to examine seven witnesses.
- vii. On the same day, the Court passed an order that summons may be issued to witness nos. 1, 2 and 5 and fixed the case for their evidence on **12.09.2025**, but the accused failed to adduce the evidence.

viii. Therefore, it was kept on 16.09.2025, subject costs of Rs. 1,000/-. On 16.09.2025, the accused also failed to adduce the evidence. However, before 16.09.2025, the petitioner neither deposited the costs nor adduced evidence; therefore, on that day, the accused's evidence, i.e., the petitioner, was closed as *she did not lead any evidence, and the matter is fixed for final argument.*

ix. Then, the petitioner again filed an application for setting aside the evidence closure order dated 16.09.2025.

x. Learned Magistrate by order dated 03.10.2025, allowed the said application subject to costs of Rs. 25,000/- paid to the respondent till 10.10.2025, and also directed that the petitioner shall conclude his evidence as early as possible within a period of one month. However, the petitioner did not comply with the said order but challenged the same before the Additional Sessions Judge. However, the same was withdrawn.

xi. *It further appears that the petitioner filed an application before the learned District Judge for the transfer of the matter from the learned Magistrate to any other Court.* The said application was rejected on 06.11.2025. Aggrieved by the said order, the petitioner has preferred a Writ Petition before this Court. The same was withdrawn by her on 18.11.2025. As such, the petition was dismissed. *While dismissing the petition, this Court has directed the learned Magistrate to expedite the trial and*

conclude the same as early as possible on or before 31.12.2025, and also directed the petitioner to cooperate with the learned Trial Court and not seek any adjournment. Despite the said facts, again, the petitioner is challenging the impugned order before this Court.

xii. It is pertinent to note that by order dated 03.10.2025, the learned Magistrate has permitted the petitioner to adduce the evidence, subject to the costs of Rs. 25,000/- to be deposited in the learned Trial Court on or before 10.10.2025. However, the petitioner failed to comply with the same or to adduce evidence on 10.10.2025. Thereafter, one more opportunity was granted to the petitioner on 27.10.2025, to deposit the costs and adduce the evidence. However, till 27.10.2025, no steps have been taken by the accused, and, therefore, the learned Magistrate closed the evidence of the accused on 27.10.2025.

xiii. Thereafter, again, the petitioner has moved an application on 13.11.2025, to set aside the order dated 27.10.2025, and permit her to comply with the order dated 03.10.2025, to deposit the costs. The learned Magistrate rejected the said application vide impugned order.

5. Perused the impugned order. It appears that the learned Magistrate has dealt with the petitioner's conduct in detail, and in paragraph 4 of the order, he has categorically observed that, since January 2025, the accused has made several attempts to prolong the trial. Though sufficient opportunity was given to her, she failed to

adduce evidence in support of her defence. The petitioner has not mentioned any grounds for non-compliance with the order at exhibit 66 in time. Although sufficient opportunity was given to her to comply with the order, the petitioner deliberately failed to comply and protracted the trial. Therefore, the learned Trial Court has rejected the application.

6. Having considered the above facts, I do not find any illegality or perversity in the impugned order. On the contrary, the order passed by the learned Magistrate appears to be just and proper and, therefore, in my view, no interference is required in the writ jurisdiction.

7. Apart from that, the conduct of the petitioner can be gathered from the above facts, how she wants to protract the trial.

8. It is pertinent to note that the petitioner does not dispute the issuance of the cheque to the respondent nor dispute that the respondent deposited the amount in her bank account. As such, I do not find substance in the contention of the learned Advocate for the petitioner that the learned Trial Court has not granted the opportunity, and the passing of the order indicates that sufficient opportunity was given to the accused to conduct a fair trial. On the contrary, it seems that the accused has abused the process of law by filing various applications at various stages, instead of proceeding with the matter, despite this Court having directed that it be concluded before 31.12.2025.

Therefore, I am of the opinion that the petitioner is liable to impose the costs for the said conduct.

9. As a result, the petition being devoid of merits, stands dismissed with costs of Rs. 10,000/- (Rupees ten thousand). Petitioner is directed to deposit costs in the Trial Court before the learned Magistrate on or before 04.12.2025, failing which, her right to proceed with the matter will be forfeited. Inform this order to the learned Magistrate.

(ABHAY J. MANTRI, J.)

SPC