

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2958 OF 2024

**SATISH
RAMCHANDRA
SANGAR**

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SATISH RAMCHANDRA
SANGAR

Date: 2025.08.08
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Mahendra Pratap D. Singh

Age about 75 Years, Occupation : Retired,
Residing at : Flat No.1003, Odyssey – 1,
Orchard Avenue, Hiranandani Gardens,
Powai, Mumbai – 400 076.

...Petitioner

Versus

1. **Mohd. Ali Qureshi**

(M/s. M.R. Builders and Developers)
Age about 65 Years, Occupation : Business,
Residing at : 1st Floor, Fatima Manjil,
Kolivari Gaon Road, Kalina, Santacruz
East, Mumbai – 400 098.

2. **The State of Maharashtra**

...Respondents

Mr.K.H.Giri a/w Mr.Pratik Yadav, Mr.Dhavan Giri and Ms.Prachi Gupta:-	Advocates for Petitioner.
Mr.H.J.Dedhia:-	APP for Respondent No.2-State.

CORAM : S. M. MODAK, J.

DATE : 4th AUGUST 2025

P. C. :-

1. Heard learned Advocate for the Petitioner-Complainant.
2. He has filed a Complaint for the offence under Section 138 of

the Negotiable Instruments Act, 1881 (“**NI Act**”) before the Court of Judicial Magistrate First Class–Panvel. He has given evidence. His evidence copy is from Page No.34 onwards. The 313 statement is also recorded. On this background, the Complainant filed an Application under Section 311 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”). The prayer is for recalling himself. The reason is there is some ambiguity about the date on which the Complainant received the knowledge of dishonour of cheque from his banker – ICICI Bank. The ambiguity is as follows:-

- (a) During examination-in-chief, he has deposed the date as 30th November 2016 whereas during cross-examination, he has given the date of knowledge as 25th November 2016.
- (b) He has also examined the Bank witness from ICICI Bank. In Para No.5, he has given the following dates:-
 - (i) Sending intimation through courier on 28th November 2016.
 - (ii) Receipt of that intimation by the Complainant on 30th November 2016. He has also annexed the necessary documents.

3. **Learned Magistrate rejected the request as per the order dated 17th October 2023.** It was rejected for the following reasons:-

“There is conflicting evidence about intimation of dishonor of cheque. In case complainant is allowed to re-call himself

for the purpose to clarify, the very admission of receipt of intimation of dishonor of cheque would be washed away. It would cause great prejudice to accused.”

4. Though the Respondent No.1–Accused tried to be served, he has evaded. Private notice was allowed. There are two Affidavits dated 14th June 2024 and 4th July 2024. **Inspite of that the Accused has not appeared.** Accordingly, I have heard the learned Advocate for the Petitioner.

5. The point involved is very narrow. Before the trial Court, two kinds of evidence are available. **One is oral evidence of the Complainant and the Bank witness and second is the documentary evidence in the form of the correspondence made by the ICICI Bank Representative.** It is difficult to ascertain why the Complainant during the course of cross-examination has given the answer about receipt of intimation on 25th November 2016. My attention is invited to the evidence of Bank witness and the documents. It indicates that the date of memo is 25th November 2016 whereas it was dispatched on 28th November 2016. It was a job of the Bank representative and it was received by the Complainant on 30th November 2016. All these dates are given in the letter dated 24th July 2017 given by the ICICI Bank to

the Complainant. Now it is a choice of the Complainant what type of answer he should give during the course of cross-examination. He might have understood the question or might not have understood the question or there may be other reason for giving that answer.

6. Be that it may, the law of evidence is very clear. As per Section 61 of the Indian Evidence Act, 1872, the contents of the documents are to be proved by way of primary or secondary evidence. In this case, there is a documentary evidence and the oral evidence to prove those documents.

7. The learned Judge has rejected the prayer for recalling for the reason, allowing the Application amounts to washing of admissions given in the cross-examination. This issue can be looked from different angle. When the trial Court will appreciate the evidence finally, whether the trial Court will consider the answer given during the cross-examination only? No, the entire oral and documentary evidence will have to be considered.

8. The best option available to the Complainant is to argue before the trial Court that the documentary evidence has to be considered as against the stray answer given by the Complainant during the course of cross-examination. **If such arguments are advanced, the trial Court to**

consider the provisions of Section 61 of the Indian Evidence Act. Ultimately when the evidence as to contents of documents has to be given, the documentary evidence plays an important role. When the trial Court will undertake this exercise, the findings given by him while passing the order dated 17th October 2023 will not come in his way. But the evidence can be appreciated by considering the above observations.

9. With these observations, I am inclined to pass the following order:-

ORDER

- (i) The Petitioner is at liberty to argue before the trial Court on the basis of the provisions of Indian Evidence Act, 1872.
 - (ii) If such arguments are advanced, the trial Court to consider them and deal with the issue.
10. With these observations, **the Writ Petition stands disposed of.**

[S. M. MODAK, J.]