

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO.4842 OF 2025**

Laxmichand Jethalal Shah ... Petitioner  
versus  
The State of Maharashtra and Anr. ... Respondents

**WITH**

**WRIT PETITION NO.4843 OF 2025**

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Laxmichand Jethalal Shah ... Petitioner  
versus  
The State of Maharashtra and Anr. ... Respondents

**WITH**

**WRIT PETITION NO.4849 OF 2025**

Laxmichand Jethalal Shah ... Petitioner  
versus  
State of Maharashtra and Anr. ... Respondents

**WITH**

**WRIT PETITION NO.4851 OF 2025**

Laxmichand Jethalal Shah ... Petitioner  
versus  
The State of Maharashtra and Anr. ... Respondents

**WITH**

**WRIT PETITION NO.4852 OF 2025**

Laxmichand Jethalal Shah ... Petitioner  
versus  
The State of Maharashtra and Anr. ... Respondents

Mr. Dushyant Purekar i/by Ilsa S. Shaikh with Mr. Atharva Jagtap for  
Petitioners.

Smt. R.S.Tendulkar, APP for State in WP Nos.4842 of 2025, 4843 of 2025 and  
4851 of 2025.

Mr. Ashok Gawai, APP for State in WP No.4849 of 2025 and 4852 of 2025.

**CORAM: N.J.JAMADAR, J.**

**DATE : 20 SEPTEMBER 2025**

**P.C.**

1. Heard the learned Counsel for the parties.
2. These Petitions assail the legality, propriety and correctness of the orders dated 22 July 2025 passed by the learned Metropolitan Magistrate, on applications to de-exhibit the documents which have been marked in evidence pursuant to assertions in the affidavits in lieu of examination-in-chief of the complainant, in the complaints for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
3. In the underlying complaint, in each of the petitions, the complainant filed affidavit in lieu of examination-in-chief and list of documents. The Petitioner – accused No.2 filed a statement of admission and denial of the documents. By orders dated 9 October 2024, the learned Magistrate exhibited the said documents purportedly in view of the averments in the affidavits in lieu of examination-in-chief.
4. The Petitioner filed applications to de-exhibit the documents which were not admitted in evidence by the petitioner, and direct the complainant to lead oral evidence in proof of those documents. By the impugned orders, the learned Magistrate was persuaded to reject the applications observing that, in a complaint for the offence punishable under Section 138 of the N.I.Act, 1888, it is not necessary to compel the complainant to lead further oral evidence once affidavit in lieu of examination-in-chief is filed.

5. Mr. Purekar, learned Counsel for the Petitioners, submitted that the learned Magistrate has not ascribed any reason as to why documents were marked, despite accused No.2 having denied those documents. It was submitted that it was incumbent upon the Magistrate to deal with the objections and pass a reasoned order. Reliance was sought to be placed on the decision of a learned Single Judge of this Court in the case of **Peacock Industries Ltd. and Ors. V/s. Budhrani Finance Ltd. and Anr.**<sup>1</sup>, and a decision of the Supreme Court in the case of **Lachhmi Narain Singh and Ors. V/s. Sarjug Singh and Ors.**<sup>2</sup>.

6. The judgment of the Supreme Court in the case of **Lacchmi Narain Singh** (supra) has no bearing on the controversy at hand. The judgment in **Peacock Industries** (supra) is required to be considered in the context of development in law. Under Section 145 of the NI Act, 1881, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding in the said Code. Under Section 146 of the NI Act, 1881, a bank slip or memo denoting that the cheque has been dishonored is presumed to be *prima facie* evidence of the fact of dishonor of the cheque. In the *suo moto* WP(Cri) No.2 of 2020, "Expeditious trial of cases under Section 138 of the NI Act, 1881"

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1 2006(5) Mh.L.J. 162

2 (2022) 13 SCC 746

while dealing with the inquiry under Section 202 of the Code in relation to Section 145 of the NI Act, 1881, the Supreme Court clarified that if the evidence of the complainant may be given by him on the affidavit there is no reason for insisting on the evidence of the witnesses to be taken on oath. In this view of the matter, if the affidavit in lieu of examination-in-chief is found sufficient to prove the documents tendered in evidence by the complainant, the complainant cannot be compelled to lead oral evidence.

7. I have perused the impugned orders and the affidavits in lieu of examination-in-chief filed by the complainant, on the strength of which the learned Magistrate has exhibited the documents. Prima facie, it appears that there are adequate averments in the affidavits in lieu of examination-in-chief in respect of each of the documents which have been marked as exhibits.

8. Mr. Purekar, learned Counsel for the Petitioners, made an endeavour to urge that, few of the documents are demonstrably false. I am afraid, the aforesaid submission can be considered at the stage of the marking of the documents. The Petitioner – accused would have an efficacious opportunity of cross-examining the complainant with regard to the genuineness and veracity of the documents, which have been marked in evidence.

9. Moreover, the learned Magistrate has correctly recorded in the impugned orders that, mere marking of a document as exhibit does not imply that the document has been proved in evidence. The question as to whether

the documents have been duly proved in evidence, would be open for the adjudication at the trial. Therefore, this Court finds that the impugned order does not warrant any interference in exercise of the writ jurisdiction.

10. The Writ Petitions stand dismissed.

**( N.J.JAMADAR, J. )**