

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 6276 OF 2025

Piyush Gangji Chheda ..Petitioner
Versus
Paras Bharat Chheda Through Aditya Bharat ...Respondents
Chheda & Anr

WITH
WRIT PETITION NO. 6277 OF 2025

Piyush Gangji Chheda ..Petitioner
Versus
Paras Bharat Chheda Through Aditya Bharat ...Respondents
Chheda & Anr

WITH
WRIT PETITION NO. 6278 OF 2025

Piyush Gangji Chheda ..Petitioner
Versus
Bharat Talakshi Chheda Through Aditya Bharat ...Respondents
Chheda & Anr

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN RAMCHANDRA
SANKPAL
Date: 2025.12.12
19:02:49 +0530

Mr. Pranay Chaugule, with Neeta Prajapati, i/b Dineshkumar Dubey,
for the Petitioners in all Petitions.
Mr. A.D. Kamkhedkar, APP, for the Respondent-State in all Petitions.
Mr. Jatin P Karia, with Snehankita Munj, Dipti Jatin Karia, Shraddha
Kamble and Vijay Andhale, for the Respondents in all Petitions.

CORAM: N. J. JAMADAR, J.
DATE : 11th DECEMBER 2025

ORDER:

1. These Petitions assail the legality, propriety and correctness of identical orders passed by the learned Magistrate in Complaints for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I. Act, 1881”), wherein the Petitioner has been arraigned as accused.
2. The complainant has examined Aditya Bharat Chheda (CW-1), the constituted attorney of the complainant as a witness. Post closure of evidence of the complainant, the statement of the accused under Section of 313 of the Code of Criminal Procedure, 1973 (“the Code”) has been recorded.
3. When the matter was posted for adducing defence evidence, the Petitioner-accused filed Applications to summon the complainant as a Court witness. It was *inter alia* contended that Aditya Chheda (CW-1) has given evasive answers and feigned ignorance about the relevant facts, and, therefore, it was necessary to summon the complainant as a Court witness to answer the questions that may be put on behalf of the accused.
4. By the impugned orders, in each of the Complaints, the learned Magistrate rejected the Applications observing that the initial onus lay on the complainant to prove the ingredients of the offence punishable under Section 138 of the N.I. Act, 1881 and, thereupon, it was for the

accused to rebut the statutory presumptions. The complainant cannot be compelled to examine himself as a witness. Nor can the court direct him to appear as a Court witness.

5. Being aggrieved, the Petitioner has invoked the writ jurisdiction.

6. I have heard Mr Pranay Chaugule, the learned Counsel for the Petitioner, Mr. Jatin P Karia, the learned Counsel for the Respondent No.1 and Mr. A. D. Kamkhedkar, the learned APP, for the Respondent No.-2.

7. Mr. Pranay Chaugule, the learned Counsel for the Petitioner would urge that under Section 311 of the Code, the Court has power to summon any person to depose as a witness before the Court. The examination of the complainant as a Court witness was necessary to arrive at a just decision of the case.

8. It was submitted that in the Reply filed on behalf of the complainants though the complainants resisted the prayer to summon the complainant as Court witness, yet, it was clearly stated that the complainant had no objection if the accused summons the complainant as a defence witness. In this backdrop there is no impediment to summon the complainant as a Court witness, submitted Mr. Pranay Chaugule.

9. I am unable to persuade to myself to agree with the submissions canvassed on behalf of the Petitioner. The complainant has examined

his power of attorney, through whom the complaints have been lodged. Whether the evidence of the Aditya Chheda (CW-1) is sufficient to render a finding of guilt is a matter to be adjudicated at the trial.

10. It is well-recognized that no person can authorise another to depose on his behalf. The worth of the evidence of Aditya Chheda (CW-1) would rest on the acts done by the Power of Attorney or the knowledge which the Power of Attorney has, in respect of the transactions in question.

11. A profitable reference can be made to the decision of the Supreme Court in the case of **Janki Vashdeo Bhojwani & Anr Vs Indusind Bank Ltd & Ors**,¹ wherein the Supreme Court, enunciated the law as under:

“13. Order III, Rules 1 and 2 CPC, empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

1 (2005) 2 SCC 217.

12. In the said case, the Supreme Court gave its imprimatur to the view expressed by the Rajasthan High Court in the case of **Shambhu Dutt Shastri Vs State of Rajasthan**² that no one can delegate the power to appear in the witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the Plaintiff in the capacity of the Plaintiff.

13. The aforesaid being the position in law, the complainant would suffer the consequences if the Court ultimately comes to the conclusion that the evidence of Aditya Chheda (CW-1) is not worthy to sustain the indictment against the accused. However, the fact that the said Aditya Chheda (CW-1) either feigned ignorance or gave evasive replies, cannot be a ground for examining the complainant as a Court witness. Thus, the learned Magistrate has taken a correct view of the matter.

14. Mr. Chaugule then urged that the accused be permitted to examine the complainant as a defence witness.

15. Since such an issue was neither raised before, nor considered by, the learned Magistrate, it may not be appropriate to delve into the aforesaid submission on behalf of the Petitioner. Suffice to note, in the event such an Application is made the learned Magistrate may decide the same on its own merits and in accordance with law.

2 (1986) 2 WLN 713 (Raj).

16. Resultantly, the Petitions, being devoid of substance, stand dismissed.

[N. J. JAMADAR, J.]