



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 396 OF 2022

IN

CRIMINAL APPEAL [STAMP] NO. 2785 OF 2022

Shri Mohan Babusa Gulhane (dead) and Others

-- VERSUS --

Vijay S/o Bhagwanrao Ambhore

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.S. Sahare, Advocate for the appellants.

None for respondent.

CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 24, 2025.

Heard.

2. The appellant challenges the order dated 17/02/2022, by which the appellants' complaint was dismissed under Section 256 of the Code of Criminal Procedure, 1973, on the ground that the appellants have failed to secure the presence of the witness, namely, Ravindra Manikrao Dhavale. It appears from the record that, although the respondent has been duly served, he has chosen not to appear before this Court. Accordingly, the matter is taken up for consideration in his absence.

3. The learned counsel for the appellant submits that, although opportunities were granted by the Court below, the appellants were unable to secure the presence of the witness, namely Ravindra, as he is also a friend of the respondent-Vijay Bhagwanrao Ambhore. He further submits that the cheque in question was issued at the behest of Ravindra, and therefore, his examination is necessary. The learned counsel prays that, as a last opportunity, the appellants may be permitted to examine the said witness. He also submits that the Court ought not to have dismissed the complaint under Section 256 of the Code of Criminal Procedure, 1973, and ought not to have acquitted the respondent.

4. I have heard the learned counsel for the appellants. I am inclined to grant leave. Leave is accordingly granted. Criminal Application No. 396/2022 is accordingly allowed. Appeal be Registered.

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5. Heard learned counsel for the appellants.
6. Admit, taken up for final hearing.

7. As stated by the learned counsel for the appellants, the cheque amount is Rs.50,000/-. However, the appellants are agriculturists. It is not in dispute that, despite several opportunities granted by the learned Judicial Magistrate First Class, Court No. 3, Amravati, the complainant failed to examine the witness, Ravindra. Nevertheless, I am inclined to grant one last opportunity to the complainant to examine the said witness. In case, the complainant fails to examine Ravindra on the next date, the learned Magistrate shall be at liberty to pass appropriate orders in accordance with law. Hence, I deem it appropriate to pass the following order:-

O R D E R

(i) The appeal is accordingly **allowed**.

(ii) The order dated 17/02/2022, passed below Exh.01 by the learned Judicial Magistrate First Class, Court No. 3, Amravati, in S.C.C. No. 1377/2016, is hereby quashed and set aside.

(iii) The complainant is permitted to produce the witness, Ravindra Manikrao Dhavale, on 13/10/2025. In case, the complainant fails to produce the witness on that date, the learned Magistrate shall be at liberty to pass appropriate orders.

(iv) The order is quashed subject to cost of Rs.1,000/-. The cost shall be paid to the respondent herein. In case the respondent is not available, the amount shall be deposited in the Trial Court, which shall thereafter release the same in favour of the respondent.

[M.M. NERLIKAR, J]

PIYUSH MAHAJAN