



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

CRIMINAL APPLICATION (APL) NO. 519 OF 2025

APPLICANT : Harish s/o Kanhaiyalal Bhatiya,
Aged about 42 Years
Occupation :Business, R/o Near
Bhartiya House, Behind Power House,
Baba Hardasram Nagar, Kacchi Kholi,
Sindhi Camp Akola,
Tah. and District – Akola.

-VERSUS-

RESPONDENT : Sunny s/o Harishkumar Jotwani,
Aged about 36 years, Occupation –
Broker, R/o Near Govindram Floor Mill,
Baba Hardasram Nagar, Kacchi Kholi,
Sindhi Camp, Akola, Tah. and District
Akola. At present resident of Flat No.
303, 3rd Floor, Kalpana Watika Apartment,
Near Asha Nittya Hospital, Adarsh Colony,
Akola, Tah. and District Akola.

Mr. N.R.Tekade, counsel for applicant.
Mr. S.A. Mohata, counsel for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 14/07/2025

ORAL JUDGMENT :

1. Heard.
2. **Admit.** Heard finally with consent of learned counsels appearing for the parties.
3. By this application, the applicant, who is the original accused in Summary Criminal Case No. 4974/202, is challenging the order passed by the learned Chief Judicial Magistrate and 9th Joint Civil Judge, Senior Division, Akola, rejecting the application for issuance of the summons to the witness.
4. At this stage, it is not necessary to adjudicate on the merits of the case. It is pertinent to note that the applicant is facing prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act'). The defence of the accused is that the cheques and the stamp papers were obtained by the witness, and the said documents are in his possession, and therefore, his evidence is required before the Court. The said application is rejected by the Court by observing that though sufficient opportunity is granted to the accused, he has not taken

effective steps to secure the presence of the witness, and therefore, the application was rejected.

5. Heard the learned counsel for the applicant, who submitted that while there is no dispute that seven to eight days were granted, the witness could not be examined despite the accused taking steps to secure their presence. However, he was avoiding the service of witness summons, and therefore, he could not examine the said witness. He submitted that the son of this witness is already examined by the accused. However, the said witness is avoiding the service of the notice, and therefore, that is the only reason.

6. Learned counsel for the respondent strongly opposed the said application and submitted that this application is filed for examining the witness only to prolong the matter. The sufficient opportunities are already granted, and therefore, no interference is called for.

7. After hearing both sides and on perusal of the record, the order of the Magistrate also shows that sufficient time is already granted to the present applicant/accused to adduce the evidence. Admittedly, in view of Section 139 of the N.I. Act, the

burden lies on the applicant to rebut the presumption regarding the offence punishable under Section 138 of the N.I. Act. At this stage, there is nothing on record to indicate the type of prejudice that would be caused to the respondent by examining the said witness. In the interest of justice, the sufficient opportunity to rebut the presumption is to be granted to the present accused. However, at the same time, the accused should not take disadvantage of the same and shall not use this practice to prolong the matter, and therefore, only one opportunity is granted to the present accused to secure the presence of a witness and cooperate with the Court to dispose of the trial at the earliest. In view of that, the application deserves to be allowed. Hence, I proceed to pass the order.

ORDER

- a] The criminal application is **allowed**.
- b] The applicant shall examine this witness without seeking any adjournment on a fixed date, and the trial Court shall not grant any further adjournment to the present applicant if he could not secure the presence of the witnesses.

- c] It is made clear that, the trial Court shall not grant any unnecessary adjournment, and the matter is to be disposed of expeditiously, as it has already proceeded further.

Criminal application is **disposed of** in the above terms.

[URMILA JOSHI-PHALKE, J.]