



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

CRIMINAL APPLICATION (APL) NO. 800 OF 2025

Prakash Ramadharsingh Rathod
Aged about 40, Occ.:Job,
R/o. Nibandhe Plots, Brokerwadi,
Chhoti Umri, Akola,
Tq. & Dist. Akola

... Applicant

Versus

Pravin Laxmanrao Lohit
aged about 35 years, Occ. Business,
Add: - Pranav Xerox, Lahariya's
Property, Near Madhumalti Apartment,
Satav Chowk, Akola, Tq. Dist. Akola,
and Besides Vijay Deshmukh House,
Jawahar Nagar, Akola, Tq. & Dist. Akola.

... Non-applicant

Mr. R.S. Suryawanshi, Advocate for applicant.
Mr. P.J. Mehta, Advocate for non-applicant.

CORAM : RAJNISH R. VYAS, J.
DATE : 23.09.2025

ORAL JUDGMENT:

Admit. Heard finally with consent of both the learned
counsel for the parties.

(2) This is an application preferred by the original
complainant, challenging the order passed in Summary Criminal Case
No.6390/2022 by the learned 6th Additional Chief Judicial Magistrate, Akola

dated 20.03.2025, by which an application preferred by the accused under Section 313 of the Code of Criminal Procedure for recalling the complainant, was allowed. Para No. 2 of the application preferred by the accused at Exhibit 51 reads as under :

“2. However some material question remained to be asked to the complainant in the above matter which is necessary for proper adjudication of case. That the remaining material questions are necessary to be asked to the PW1 for bringing the factual matrix on record.....”

(3) This is the reason which has been advanced by accused in an application preferred below Exhibit 51 praying for recall. The said application was opposed by the complainant on the ground that accused is indulging into delaying tactics.

(4) I have gone through the record and I have heard contentions of learned counsel for the respective parties.

(5) In this case, on 26.03.2024, the examination-in-chief of complainant was recorded. On 20.07.2024 complainant was subjected to cross-examination but the cross-examination could not be completed. Meanwhile, on 07.08.2024, new Advocate was engaged by the accused. On

16.08.2024 and 28.08.2024 again time was sought by the accused to conduct cross-examination. On 15.10.2024, as no steps were taken by the accused, 'no cross-examination' order was passed. On 25.11.2024, an application moved by the accused for setting aside no cross order was allowed subject to the cost of Rs.200/-. On 13.12.2024, cross-examination of the complainant was completed and on 13.01.2025, the accused was subjected to inquiry under Section 313 of the Code of Criminal Procedure. On 21.01.2025, case was fixed for defence evidence and on 24.01.2025, application below Exhibit 51 for recalling was preferred.

(6) The aforesaid dates would clearly reveal that the accused was interested in adjourning the matter rather than completing the cross-examination. If application below Exhibit 51 is perused it would be crystal clear that pleadings made therein are not specific. Not only this in the statement recorded under Section 313 of the Cr.P.C. also, no specific defence has been taken by the accused. I am aware of the fact that presumption is required to be rebutted by the accused in prosecution under Section 138 of the Negotiable Instrument Act. In the instant case, the case is now fixed for defence evidence where the accused will have ample opportunity to rebut the presumption.

(7) That being so, I am of the opinion that order allowing an application for recalling is not legal and proper since absolutely no specific case was pleaded mentioned in an application for recalling. Accordingly, the present application is allowed.

(8) Order dated 20.03.2025 in SCC No.6390/2022 passed by the learned 6th Additional Chief Judicial Magistrate, Akola is set aside.

(9) Criminal application is allowed in the aforesaid terms.

[RAJNISH R. VYAS, J.]

Prity