



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

CRIMINAL APPLICATION (APL) NO. 881 OF 2025

Manisha w/o. Prakash Kasture

Vs.

Sapna wd/o. Arun Jadhav

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

Court's or Judge's orders

Mr. Tejas Deshpande, Advocate for the Applicant.
Mr. Ranjeetsingh Gahilot, A.P.P. for Non-applicant.

CORAM : MRS. VRUSHALI V. JOSHI,J.

DATED : 23/09/2025.

. The applicant is challenging the order passed by the 2nd Judicial Magistrate First Class, Buldhana allowing the application below Exhibit-5 in S.C.C. No.460/2024.

2. The non-applicant had filed proceedings before the Court of Judicial Magistrate First Class under Section 138 of the Negotiable Instruments Act, bearing Criminal Case No.460/2024. The matter is fixed for argument. The applicant is appearing in the said proceedings. After recording of the statement under Section 313 of the Code of Criminal Procedure, the non-applicant has filed the application to recall the witnesses i.e. Bank officials to examine them. The learned Counsel for the applicant submits that in the said application filed by the non-applicant he has not mentioned any reason for recalling the witnesses. The learned Counsel for the applicant has pointed out that the application was filed by the non-applicant to exhibit the same documents which he wanted to exhibit was not pressed by the non-applicant. The same document, the non-applicant wanted to prove through the witnesses. Without giving any reason, the application was

allowed and, therefore, the applicant has filed the present application before this Court. In support of his above said argument has relied on the judgment of this Court in the case of *Kailash s/o. Dhanraj Batra Vs. Amol alias Jolly s/o. Shrichand Kungwani* reported in **2014 ALL MR (Cri) 5112**, wherein this Court has observed in paragraph Nos.7 and 8 as under :

“7. In any event, there is no material on record to indicate that the applicant has taken all necessary steps to bring the Postman before the Court and that his case was closed prematurely by the Magistrate. Second witness sought to be examined by the applicant is Bank Officer. In this regard, it may be noted here that in most of the cases under Section 138 of the Negotiable Instruments Act Bank Manager and Postman are important witnesses if the documents are not admitted by the accused. This should have been borne in mind by the complainant during the course of the trial itself. The complainant cannot be allowed to raise this issue when the statement of accused under Section 313 of the Code of Criminal Procedure had been recorded. Needless to state that the accused/ respondent might have disclosed his defence during the course of statement recorded under Section 313 of the Code of Criminal Procedure.

8. In these circumstances, in my opinion, it is too late for the applicant to apply for issuance of summons to the Postman and the Bank officer. I do not see any reason to interfere with the order of the learned Magistrate in exercise of powers under Section 482 of the Code of Criminal Procedure.”

3. The learned Counsel for the non-applicant has stated that it is the case of the non-applicant that she has withdrew the amount from her Fixed Deposit and given it to the accused and to prove this fact, she wants to examine the witnesses i.e. two Branch Managers of two Banks. It will cause no prejudice to the applicant as the applicant will get an opportunity to examine the said witnesses.

4. The non-applicant has relied on the judgment of the Hon'ble Apex Court in the case of *State Vs. N. Seenivasagan* reported in **(2021) 14 SCC 1** in support of his argument that there is no need to give the reasoning. Section 311 of the Code of Criminal Procedure empowers the Court to summon a material witness, or to examine a person present at "any stage" of "any enquiry" or "trial", or "any other proceedings" under Cr.P.C. or to summon any person as a witness, or to recall and re-examine any person who has already been examined.

5. The non-applicant has stated that there are pleadings in the complaint. This is not a case to fill up the lacunae. Inadvertently, the learned Counsel has not mentioned the reason and not filed the application before filing the evidence close pursis. That cannot be a reason to reject the application. The trial Court has justified in allowing the application filed by the non-applicant for recalling the witnesses. Hence, prayed to reject the application filed by the applicant.

6. Heard both the learned Counsel for the parties.

7. It appears from the record that the case is pending for final arguments. The documents which are

brought on record, the Counsel was aware about the said documents. The learned Counsel for the non-applicant has filed the application to Exhibit the document, however, it was not pressed. This is not a new case as the pleadings are there and in cross-examination, the question is put to the witness. The statement under Section 313 of the Code of Criminal Procedure is recorded and the case is at the fag end.

8. It appears that because of the ignorance of the Counsel, the application was not filed at the proper stage and proper reasoning were not given. The applicant should not be suffered for the mistake committed by the Counsel. Hence, as per the judgment of the Hon'ble Apex Court in case of State Vs. N. *Seenivasagan (supra)*, Section 311 of the Code of Criminal procedure empowers the Court to summon, if the evidence is essential for the just decision of the case and the determination of the factor. The scope and object of the provision to enable the Court to determine the truth and to render just decision after discovering all relevant facts and obtaining proof of such facts to arrive at a just decision of the case. No prejudice will be caused to the applicant as he will get opportunity to cross-examine the witnesses. Hence, no need of interference at the hands of this Court.

9. With the aforesaid observation, the application is dismissed.

(MRS. VRUSHALI V. JOSHI, J.)