



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

CRIMINAL APPLICATION (APL) NO.934 OF 2025

Sukhdeo s/o Kashiram Jadhav
Aged about 53 years,
Occupation – Business,
R/o. C/o Sau. Nilima Sukhdeo Jadhav,
Police Vasahat, Chikhali Road,
Buldhana, Tah. and District Buldhana

...APPLICANT

VERSUS

Rupali Mohan Khanna
Aged about 45 years,
Occ. Advocate/Asstt. Govt. Pleader,
Office of Govt. Pleader at District and
Sessions Court, Buldhana
Tah. and District Buldhana

...NON-APPLICANT

Mr. S.U. Bhuyar, Advocate for the applicant.

Mr. R. Karode, Advocate for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : AUGUST 01, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for both the parties.

2. By preferring this application, the applicant has challenged
the order dated 29/05/2025 passed by the learned Additional Chief

Judicial Magistrate, Buldhana in S.C.C. No.66/2023 and the applicant seeks stay to the further proceeding in pursuance of the impugned order dated 29/05/2025 in S.C.C. No.66/2023

3. Brief facts which requires to be mentioned for the disposal of the application are as under :

A] The non-applicant is the original complainant who filed the complaint under Section 138 of the Negotiable Instrument Act, 1881 on an allegation that the applicant has obtained the hand loan from her of Rs.5,00,000/- for the domestic reasons on the promise of repayment within 2 - 3 months. But as he has not paid the money, therefore, she demanded the amount and the applicant has issued two cheques dated 16/09/2022 of Rs.2,50,000/- each bearing No.480687 and 480688 of Punjab National Bank. Said cheques are deposited by her in her account which are dishonoured therefore, the present applicant was served with the notice. After receipt of the notice also, the applicant has not repaid the amount and hence the non-applicant constrained to file the complaint. After filing of the complaint, learned Magistrate has taken cognizance of the complaint, issued the process. The present applicant appeared. The plea was recorded and the complainant entered into the witness box.

4. It is the contention of the complainant that at the time of filing of the document inadvertently wrong demand notice i.e. draft notice has been attached and the same has been executed. At the time of the cross-examination the said mistake brought to her notice and thereafter she filed an application under Section 91 of the Code of Criminal Procedure for production of the demand notice received by the accused vide Exhibit 51. Said application was allowed with directions to the accused to produce original notice received by him, within 10 days but accused has not produced the demand notice on record, and therefore, said ambiguity regarding correct date of demand notice is still there, and therefore, she filed an application for re-examination.

5. Said application was strongly opposed by the present applicant on the ground that to fill up the lacuna, said application was filed.

6. After hearing both the sides, the learned trial Court granted permission for re-examination by observing that no prejudice will be caused to the accused if the application is allowed as accused would get an opportunity to re-cross-examine the complainant on that point. Moreover, accused can also lead the evidence to prove that he has received the notice dated 10/10/2022 instead of 11/11/2022. Thus, by using the power under Section 311 of the Cr.P.C. the Additional Chief

Judicial Magistrate, Buldhana granted the permission for re-examination of the witness.

7. Being aggrieved and dissatisfied with the same, the present application is filed by the applicant who is the original accused on the ground that learned trial Court has not considered that the application was filed only to fill up the lacuna which is not permissible.

8. Heard learned Counsel for the applicant who reiterated the said contention and submitted that the complainant is a practising Advocate as well as working as Assistant Government Pleader in Buldhana District & Sessions Court. She is not a layman. She is aware about the legal provisions and despite she is having knowledge about the legal provisions she filed wrong notice before the Court which is brought to the notice during the cross-examination. Now, the present application is filed only to fill up the lacuna which is not permissible, and therefore, the order passed by the learned Chief Judicial Magistrate deserves to be quashed and set aside.

9. Learned Counsel for the non-applicant strongly opposed the said contention and submitted that inadvertently the said notice was filed by the non-applicant and when it was brought to her notice during cross-examination she immediately filed an application

under Section 91 of the Cr.P.C., the same was allowed. The order passed below the application filed under Section 91 of Cr.P.C. was not challenged by the present applicant. The application was filed for re-examination only to remove the ambiguity, and therefore, no interference is called for.

10. Before entering into the merits of the case, it is necessary to see the object of Section 311 of the Cr.P.C. On reading of Section 311 of Cr.P.C. the widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. The provision clearly states that all that is required for exercising the powers is that such evidence must be essential for just decision. It is therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case. The power vested under the said provision is made available to any Court may, at any stage of any inquiry, trial or other proceeding initiated under this Code, summon any person as a witness or examine any in attendance, though not summoned as a witness, or recall and re-examine any person already examined. Insofar as recalling or reexamination of any person already examined, the Court must

necessary consider and ensure that such recall or reexamination of any person appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the court, it is needless to state that exercise of such power should be made judicially and not arbitrarily.

11. In view of the above object of the Section 311 of Cr.P.C. the Additional Chief Judicial Magistrate has passed an order to remove only the ambiguity and no illegality is committed by the learned Additional Chief Judicial Magistrate, Buldhana, and therefore, no interference is called for. In view of that, the application being devoid of merits deserves to be dismissed.

12. Hence, the application is hereby dismissed accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*