



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

**CRIMINAL APPLICATION (APL) NO.1699 OF 2024**  
(Harish Laxmandas Parvani Vs. Dhun Sales Corporation)

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order  
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Court's or Judge's Order

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

**CORAM:- URMILA JOSHI-PHALKE, J.**  
**DATED :- JANUARY 21, 2025.**

Heard.

2. By this application, the applicant who is the original accused in Summary No.5513/2018 challenging the order passed by the Additional Chief Judicial Magistrate, Akola rejecting the application for issuance of the summons to the witness.

3. It is not necessary to go or enter into the merits of the matter. At this stage, it is necessary to note that the applicant is facing the prosecution under Section 138 of the Negotiable Instrument Act, 1881. The defence of the accused in the application is that the original complainant is running the money lending business. Recently, the Registrar, Co-operative Society has also raided his office and seized many documents, and therefore, the accused in support of his defence intends to examine the witness i.e. the concerned officer of the Co-operative Society, Akola. Said application is rejected by the Court by observing that the accused has nowhere

mentioned how that proceeding and documents are relevant to the present case and rejected the application.

4. Learned Counsel for the applicant submitted that as per the defence of the accused, the complainant is involved in money lending business. The transaction alleged is also out of the money lending, and therefore, it is essential to examine this witness to rebut the presumption. The burden is on the present applicant to rebut the presumption when the complainant establishes the foundational facts, and therefore, the opportunity is to be granted him to adduce the evidence which is rejected by the trial Court and no prejudice will be caused to the complainant by examining the said witness.

5. 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. Initially also this Court has directed the trial Court not to grant any adjournment unless the sufficient reason is shown.

6. After hearing both the sides and on perusal of the record, the order of the Magistrate also shows that the Sub-Registrar, Co-operative Society, Akola may initiate the proceeding against the accused. Whether there is a substance in the allegation that the complainant is running a money lending business or not or whether a raid was conducted or not is a matter of evidence.

7. Admittedly, in view of Section 139 of N.I. Act, the burden is on the present applicant to rebut the presumption as far as the offence punishable under Section 138 of the N.I. Act is concerned. At this stage, there is nothing on record to show that what type of prejudice would be caused to the respondent by examining the said witness, and therefore, in the interest of justice and in the interest of fair trial, that opportunity is to be granted to the applicant for just decision of the case to examine the witness i.e. Sub-Registrar Co-operative Society to prove his contention. This aspect has not been considered by the trial Court, and therefore, the impugned order dated 15/10/2024 deserves to be quashed and set aside.

8. In view of that, the application is allowed and disposed of.

9. The applicant shall examine this witness without seeking any adjournment and the trial Court shall not grant any adjournment to the present applicant if he is not prepare to examine the said witness. 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 is already fixed for the judgment.

10. The application is disposed of in the above terms.

**(URMILA JOSHI-PHALKE, J.)**