



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

**CRIMINAL WRIT PETITION NO. 976 OF 2024**

**PETITIONER** : Vilas s/o Vishnuji Zade,  
Aged about 39 years, Occu: Agriculturist,  
R/o Amdi, Tahsil – Parseoni, District  
Nagpur.

**VERSUS**

**RESPONDENT** : Shri Shekhar s/o Shankarlalji Jaiswal,  
Aged about 50 years, Occu: Business,  
R/o Plot No. 1272, Deshpande Layout,  
Nagpur, District Nagpur.

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Mr. A.K. Neware, counsel for petitioner.  
None for the respondent.  
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**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATE : 23/01/2025**

**ORAL JUDGMENT :**

1. Heard.
2. Though respondent is served, none appeared on behalf of the respondent.
3. Rule.

4. Rule made returnable forthwith. Heard finally by consent of learned counsel Mr. A.K. Neware for the petitioner.

5. By this writ petition, the petitioner is seeking relief of issuing the appropriate writ, order, or direction, thereby calling for the record and proceeding of SCC No. 217/2015 pending before the learned Judicial Magistrate First Class, Ramtek; (2) to quash and set aside the impugned order dated 26/06/2024 passed by the learned Judicial Magistrate First Class, Ramtek, in SCC No. 217/2015 and allow the application filed by the petitioner, thereby disallowing the evidence on affidavit of the respondent.

6. The facts which give rise to the petition are as under:  
The petitioner had filed a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to 'N.I. Act') against the respondent vide SCC No. 217/2015 before the Judicial Magistrate First Class, Ramtek. After recording the statement under Section 313 of Cr.P.C., the respondent/accused adduced his evidence by filing an affidavit, which is not permitted under Section 145 of the N.I. Act. Therefore, the petitioner had filed an application below Exhibit No. 67 for disallowing the evidence on affidavit of the accused, which is rejected, and hence

this petition.

7. Heard learned counsel for the petitioner, who submitted that in view of Section 145 of the N.I. Act, only the complainant is permitted to adduce his evidence on affidavit. Section 145(1) of the N.I. Act nowhere states that or mentions the evidence of the accused, and therefore, in view of Section 145(1) of the N.I. Act, the accused is not permitted to adduce his evidence on affidavit.

8. In support of his submissions, learned counsel for the petitioner placed reliance on the decision of *Viral Enterprises vs. State of Maharashtra and another* [2024 ALL MR Cr.278] as well as *M/s Mandvi Cooperative Bank Limited v. Nimesh B. Thakore* [(2010) 3 SCC 83].

9. Learned counsel for the petitioner submitted that the question arises before the Hon'ble Apex Court whether the provision of Section 145 of the Act as amended by the N.I. Act is applicable to the complaints under Section 138 of the N.I. Act pending of the date on which the amendment came in force and whether Section 145 of the N.I. Act permits the accused to adduce

evidence on affidavit. While answering this question, the Hon'ble Apex Court has dealt with the provision of Sections 143 to 147 and observed that the Sections 143 to 147 were designed especially to lay down a procedure for a trial of dishonoured cheque cases with the sole object that the trial of those cases should follow a course even swifter than a summary trial and once it is seen that even the special procedure failed to effectively and expeditiously handle the vast multitude of cases coming to the Court, the claim of the accused that on being summoned under Section 145(2), the complainant or any of his witnesses whose evidence is given on affidavit must be made to depose in examination-in-chief all over again plainly appears to be a demand for meaningless duplication, apparently aimed at delaying the trial.

10. In para-32, it is observed that on a bare reading of Sections 142 and 143 of the N.I. Act, it is clear that the legislature provided for the complainant to give his evidence on affidavit and did not provide for the accused to similarly do so. But the High Court thought that not mentioning the accused along with the complainant in sub-section (1) of Section 145 was merely an

omission by the legislature that it could fill up without difficulty. Even Section 145 was merely an omission by the legislature that it could fill up without difficulty, even though the legislature in their wisdom did not deem it proper to incorporate the word 'accused'. Though the legislature in their wisdom did not deem it proper to incorporate the word 'accused' with the complainant in Section 145(1).." , it did not mean that the Magistrate could not allow the accused to give his evidence on affidavit by applying the same analogy unless there was a just and reasonable ground to refuse such permission. There are two errors apparent in the reasoning of the High Court. First, if the legislature in their wisdom did not think "it proper to incorporate a word 'accused' with the word 'complainant' in Section 145(1)..." , it was not open to the High Court to fill up the self-perceived blank. Secondly, the High Court was in error in drawing an analogy between the evidence of the complainant and the accused in a case of a dishonored cheque, and it is held that Section 145(1) gives the right to the complainant to give evidence on affidavit, but no such right is available to the accused.

11. It is apparent that the learned trial Court has ignored

the provision as well as ignored the law settled by the Hon'ble Apex Court and rejected the application without assigning the reason, and therefore, the writ petition deserves to be allowed. Accordingly, I proceed to pass the following order.

- a] The writ petition No. 976/2024 is allowed.
- b] The application filed below Exhibit No. 67 for disallowing the evidence of the accused on affidavit is hereby allowed.

12. **Rule** is made absolute in the above terms. No order as to costs.

[URMILA JOSHI-PHALKE, J.]