



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

CRIMINAL WRIT PETITION NO. 999 OF 2024

Lalit Ganesh Mundhre,
Aged 39 Years,
R/o Kute Vetala, Malegaon,
Dist. Washim,
C/o Shri Ravishankar Electricals,
Aathawadi Bazar, Malegaon,
Tq. Malegaon, District Washim. **PETITIONER**

Versus

Gajanan Suryabhan Navghare,
Aged 40 Years,
R/o. Shelu Phata, Malegaon,
Tq. Malegaon, District Washim,
P.S. Malegaon. **RESPONDENT**

Mr. S.V. Sirpurkar, Advocate for the Petitioner.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 6th AUGUST, 2025.

ORAL JUDGMENT :-

1. Heard.

2. **Rule.** Rule made returnable forthwith.

3. By preferring this Writ Petition, the Petitioner has challenged the order passed by the Judicial Magistrate First Class (Court No.2), Malegaon, Dist. Washim, dated 20.07.2024 below Exh. 75 rejecting the application for recalling the witness.

4. Heard learned Counsel for the Petitioner, who submitted that the Petitioner is the original accused in 138 proceedings bearing S.C.C. No. 1199/2016. As the presumption is in favour of the Complainant, and therefore, the accused has to rebut his presumption and the defence of the accused is that the alleged instrument is from the cheque and it is a pay slip, and therefore, requested the Trial Court to issue the summons to the Branch Manager of Buldhana Urban Cooperative Credit Society, Branch Malegaon. The Judicial Magistrate First Class, Malegaon has not taken into consideration this fact and wrongly rejected the application, and therefore, this Writ Petition.

5. He submitted that, as the presumption is in favour of the Complainant and the accused has to rebut the presumption, and therefore, burden is on the accused to prove

that the cheque was not issued against the discharge of legal and enforceable debt, in fact it is not a cheque itself but this fact was not considered and by erroneous discussion, the application is wrongly rejected.

6. He submitted that, as far as the relevancy of the witness is concerned, which is already stated in the application and the Petitioner is aware that Section 311 of Cr.PC. cannot be used to fill up the lacuna but it is for the just decision of the case and the relevant witness is the person of the Buldhana Urban Cooperative Credit Society, Malegaon to establish that the disputed document is not a cheque but it is a pay slip.

7. Despite the service of notice, the Respondent failed to appear.

8. Heard learned Counsel for the Petitioner. Perused the impugned application as well as the impugned order. The Judicial Magistrate First Class, Malegaon has observed that the relevancy of the witness itself is not mentioned in the application. As there is nothing mentioned in the application

then why the Petitioner is intending to examine this witness. Thus, the relevancy of the witness is to be mentioned in the application.

9. Considering the ground raised in the Petition and considering the order passed by the Judicial Magistrate First Class, Malegaon, it would be in the interest of justice and for the just decision of the case to give a liberty to the present Petitioner to file a fresh application mentioning the entire facts and the relevancy of the witness in detail and the Judicial Magistrate First Class, Malegaon can reconsider the said applicant on its own merits. In view of these directions, the Writ Petition can be disposed of.

10. The Writ Petition is **disposed** of with liberty to the present Petitioner to file fresh application mentioning the detail reasons and the relevancy of the witness and the Judicial Magistrate First Class (Court No.2), Malegaon shall consider the said application on its own merits afresh without prejudice to the earlier order.

11. Rule accordingly. No costs.

12. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte