



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

CRIMINAL WRIT PETITION NO. 415 OF 2025

1. Korji Damji, Partnership Firm, 21,
Anupama, 2nd Floor, Shivam Society,
Devidayal Road, Mulund [West]
Mumbai 80, Through its Partners.
2. Narsi Premji Kothari,
3. Piyush Narsi Kothari,
4. Samir Narsi Kothari,
No. 2 to 4 resident of 1801, Balaji
Krupa, 18th Floor, Beside Upasane
Hospital, LBS Marg, Mulund West,
Mumbai-80.

PETITIONERS

Versus

Kusum Motichand Vora,
Aged Adult, Occ. Business,
Through Power of Attorney,
Harsh Motichand Vora,
Aged Adult, Occ. Business,
R/o Akola, Tq. & Dist. Akola.

RESPONDENT

Mr. J.B. Gandhi, Advocate for the Petitioners.
Mr. R.R. Dawada, Advocate for the Respondent.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 18th JUNE, 2025.

ORAL JUDGMENT :-

1. Heard.
2. **Rule.** Rule made returnable forthwith.
3. Heard finally by the consent of learned Counsel for the rival parties.
4. By this Writ Petition, the Petitioner had challenged the order passed below Exhs. 190 and 191 by which the opportunity to issue the summons to the witness was refused to the petitioners and praying to set aside and quash the said orders and direction to issue fresh summons or bailable warrant to the said witness.
5. The Brief facts which are necessary for the disposal of the Writ Petition are as under:
 - 5(i). The Petitioner is the original accused against whom the criminal complaint SCC No. 3194/2020 is filed. On an allegation that Respondent who is the original complainant who is the resident of Akola and accused No.1 is the partnership firm

and accused Nos. 2 to 4 are the partners who are inter related and looking after the day to day affairs of the said firm.

5(ii). The amount of Rs. 25 Lakhs was deposited by the complainant with the firm by cheque drawn on Bank of India. It is further alleged that, it was acknowledged by executing the receipt on 21.10.2013 in favour of Respondent No.1. It is also alleged that the said amount was to be repaid on demand with interest at the agreed rate. The Petitioner issued the cheque dated 19.08.2020 for the amount of Rs. 25 Lakhs drawn on the Union Bank of India in favour of the Respondent who is the original complainant with assurance that it shall be honoured on presentation. The cheque was presented by the complainant in his bank but it was dishonoured on account of insufficient funds, and therefore, the notice was issued and the complaint has been filed against the present Petitioner. On hearing the complainant the process was issued on 12.01.2024. On issuance of the process the present Petitioner appeared through his Counsel. The plea was recorded and thereafter both the parties were directed to adduce the evidence. Accordingly, the complainant has adduced the evidence. The defense of the

present Petitioner that the complainant is running the money lending business and running business without holding a valid license under the Maharashtra Money-Lending (Regulation) Act, 2014, and therefore, the Petitioner applied for issuance of summons to the witness after recording his statement under Section 313 of Cr.P.C. The said permission was granted to the present Petitioner but after granting permission and after sufficient opportunity the Petitioner could not adduce the defence evidence, and therefore, his evidence was closed and the application for issuance of summons to the witness is rejected.

5(iii). Being aggrieved and dissatisfied with the same, the present Writ Petition is filed by the Petitioner on the ground that the original complainant/Respondent is indulged in the illegal activity i.e. the money lending business and there are several victims at the hands of the present Respondent, and therefore, the Petitioner is intending to examine one of the witness who is a victim at the hands of the complainant. Therefore, the application was filed after recording the statement of the petitioner under Section 313 of Cr.P.C.

5(iv). The witness summons was issued to Uma Medical Agency who is proprietor which was not served. Thereafter time and again the opportunity was granted to the present Petitioner to examine the witness but the present Petitioner could not secure the presence of the said witness, and therefore, the evidence of the present Petitioner was closed and permission was not granted.

6. On perusal of the order passed by the Additional Chief Judicial Magistrate Court-7 Akola, it reveals that the complainant has resisted the application on the ground that the application amounts of mockery of law and abuse of process of law. No directions of this Court are fulfilled by the accused persons i.e. the Petitioner and time and again the opportunities are granted to the present Petitioner but the present Petitioner has not take any steps to secure the presence of the witnesses, and therefore, the said opportunity cannot be granted to the present Petitioner.

7. The order discloses that the statement under Section 313 of Cr.P.C. of the accused persons was recorded on 04.02.2025 since then the matter is for the defence evidence.

The evidence of DW-1 was recorded by producing the copy of deposition in S.C.C. No. 1282/2022. Summons witness mentioned in the application was issued but the report received twice that the witness is not residing on the given address. Since then, the defence Counsel has not produced or submitted the new address and the matter is held up on the said stage. There are directions of the Appellate Court to decide this matter as early as possible. On giving sufficient opportunities for recording the evidence of defence witnesses the Petitioner has not taken any steps. Even no proper address is provided to the Court to issue the summons. In all 18 dates are given to the present Petitioner.

8. The roznama obtained through E-Court services is also placed on record by the learned Counsel for the Respondent which also substantiates the contention that despite sufficient opportunity is granted the Petitioner failed to secure the presence of the witnesses. Thus, considering the order passed by the Additional C.J.M. Court No. 7 Akola and considering the roznama it reveals that after sufficient opportunity the Petitioner failed to adduce the evidence and no

plausible reason is put forth before the Court to give him an opportunity. The conduct of the present Petitioner itself is sufficient to show that he has contributed for abusing the process of law.

9. Considering the entire record, no case is made out to interfere with the said order. In view of that, the Writ Petition deserves to be dismissed.

10. Accordingly, Writ Petition is **dismissed**. No cost.

11. Rule is discharged.

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

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte