



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 986 OF 2026
IN
CRIMINAL APPEAL NO. 803 OF 2024

Shirdi Nagari Sahakari Patasanstha
Through Its Employee
Shri Vishnu Ramrao Thombre
Age : 62 Years : Occu : Service,
R/o : Shirdi, Taluka : Rahata,
District : Ahmednagar.

... Applicant
[complainant]

Versus

Shri Bhagwan s/o Raman Patil
Age : Major, Occu : Agriculture,
R/o : Nimgaonwadi, At Post Shirdi,
Taluka : Rahata, District : Ahmednagar.

... Respondent
[Accused]

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Mrs. Rashmi S. Kulkarni h/f Mr. Sanket S. Kulkarni, Advocate for the Applicant.

Mr. Avinash Barhate Patil, Advocate for the Respondent (through video conference)

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 17.03.2026

Pronounced on : 18.03.2026

ORDER :

1. Present application is for grant of stay to the effect, operation and execution of clause (4) of judgment and order dated 06.10.2023 passed by learned 2nd Judicial Magistrate F.C., Rahata in S.C.C. No. 1197 of 2018.

2. Learned counsel pointed out that, applicant is a bank/a financial institution involved in the business of extending loans. That, applicant bank had instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 [NI Act] bearing S.C.C. No. 1197 of 2018 against present respondent. That, respondent had borrowed loan and had committed the offence under Section 138 of the NI Act. That, during pendency of trial, matter was referred to Lok Adalat for amicable settlement and in consequence to it, two cheques were issued by accused but the same got dishonored. That, unfortunately proceedings instituted by the applicant under Section 138 of NI Act ended up in acquittal, against which leave to file appeal was preferred before this Court and that this Court was please to grant leave by order 27.08.2024. Learned counsel further pointed out that, matter is already admitted in September 2024 and record and proceedings are called and are still awaited.

3. However, according to learned counsel, in spite of knowledge to the above extent, accused instituted proceedings under Section 421 of Cr.P.C vide Criminal Misc. Application No. 383 of 2024. That, 20% of the cheque amount was already credited to the account of respondent-accused. That, however, present respondent-original

accused, vide above proceedings, has prayed for initiating arrest proceedings before the trial court and therefore there is strong apprehension of any order being passed to that extent by the learned trial court which is seized with the matter which is listed on 23rd of this month, and hence she urges for grant of above prayers.

4. Learned counsel for respondent justifies the initiation of proceedings before trial court by invoking Section 421 of Cr.P.C.

5. After considering the above submissions of each side and on going through the papers, it does emerge that the proceedings under Section 138 of the NI Act were instituted by present applicant vide S.C.C. 1197 of 2018. Present respondent-original accused therein seems to be acquitted by the learned trial court by judgment and order dated 06.10.2023 against which, after filing leave to file appeal and succeeding in the same, appeal against acquittal is shown to be admitted and record and proceedings is called and the same seems to be awaited.

6. It appears that, subsequent to that, i.e. on 07.12.2024, Cri. Misc. Application No. 383 of 2024 has been pressed into service by the present respondent and copy of the same is also annexed herewith

which shows that in said application, Section 421 of Cr.P.C. is invoked which deals with procedure for recovery of fines. For ready reference, the said provision is reproduced as under.

“421. Warrant for levy of fine. *-When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-*

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

7. The above provision is taken recourse to when fine is imposed as a part of sentence or when compensation or maintenance is ordered to be paid and recoverable as a fine. Indeed, procedure of issuing warrant is permissible. However, here, aggrieved by the order of acquittal, after obtaining leave, appeal is preferred and the same is *sub judice*. Going by the prayer in Criminal Misc. Application No. 383 , it is abundantly clear that respondent is urging for issuing arrest warrant. Next date before the trial court is said to be 23.03.2026. Cause-list is placed on record. From 19.03.2026 till 22.03.2026, this

court would not function. Resultantly, taking the above submissions and counter submissions into consideration, this court is inclined to grant protection as prayed. Hence, following order :

ORDER

- I. Application is allowed in terms of prayer clause (A).
- II. Application is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

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