IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 231 OF 2026

Sajid Ahamad Iqbal Ahamad Bhosage
Age:- 46 Years Occ:- Business
R/At. 12-2-28/57/A,
Sabir Nagar, Asif Nadaf, Hyderabad, Telangana ... Petitioner

SHAILAJA SHRIKANT HALKUDE
Digitally signed by SHAILAJA SHRIKANT HALKUDE
Date: 2026.11.06 16:49:04 +0530

VERSUS

1. Ayyub Ilahibaksh Bagwan
(Prop. of A.I.B.)
Age :- 63 Occ:- Business
R/At. Shop No. L- ½,
Market Yard, Solapur

2. The State of Maharashtra,
(Through D.G.P. Office) ... Respondents

...

Mr. Prabodhan Jadhav (Through VC) a/w Mr. Pratik Jadhav, Advocates for Petitioner.

Mr. Pankaj P. Deokar, APP for Respondent-State.

Mr. Nishikant Degaonkar a/w Adv. M. S. Mulla, Advocate for Respondent No. 2.

...

CORAM : ABHAY J. MANTRI, J.
DATE : NOVEMBER 05, 2026

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the respective parties at the admission stage.

2. The Petitioner/Original Accused has challenged the order dated 28th October, 2025, passed by the learned Additional Sessions Judge, Solapur, in Criminal Revision Application No. 52 of 2025, whereby the learned Additional Sessions Judge allowed the Revision Application and reversed the order dated 9th January, 2025, passed by the learned Judicial Magistrate First Class, Court No. 3, Solapur (for short, *"learned Magistrate"*), below Exhibit 154 in S.T.C. No. 1172 of 2014, whereby the application below Exhibit-154 seeking recall of the witness, was rejected. Therefore, the Petitioner has preferred this Petition.

3. The Respondent has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, *"N.I. Act"*), which was registered as S.T.C. No. 1172 of 2014. Wherein the Petitioner is the accused. In the said proceeding, Respondent No. 1 had concluded his evidence, and the matter was posted for argument. During arguments, the learned Advocate for the Petitioner raised certain grounds, contending that the Respondent had not proved the cheque in question. At that time, Respondent No. 1 moved an application before the learned Trial Court to recall the Complainant to prove the original cheque. The learned Magistrate, by order dated 9th January, 2024, rejected the application, holding that the Respondent is not entitled to recall himself to fill the lacuna at the stage of final argument. Aggrieved by the said order, the Respondent preferred a revision before the learned

Sessions Court. The learned Sessions Court, by its order dated 28th October, 2025, allowed the revision and set aside the order passed by the learned Magistrate below, Exhibit-154, permitting the Respondent to adduce evidence to the limited extent of proving Cheque No. 000070. Aggrieved by the said order, the Petitioner has preferred this Petition.

4. Learned Advocate for the Petitioner vehemently contended that the original complaint was pending for final arguments. At that time, the learned Advocate for the Petitioner had raised the objection that the Respondent failed to prove the cheque in question. Therefore, to fill the lacuna, the complainant had moved an application at Exhibit-154 before the learned Trial Court. In the application, the Petitioner did not state any cogent reason for recalling the witness. Therefore, the learned Trial Court's finding that it was not proper to recall the witness to fill the lacuna was just and proper. However, the learned Additional Sessions Court did not consider that finding and, without recording any reason, set aside the order. During arguments, he took me through the order passed by the learned Magistrate, the application filed by the Respondent, the order passed thereon, and the order passed in revision by the learned Sessions Court. Hence, he urged that the impugned order be quashed and the Petition be allowed.

5. On the other hand, learned Advocate for the Respondent strenuously opposed the petition and submitted that the Respondent is

uneducated and is not aware of the English language; consequently, the contents of the complaint. He is not aware of the averments in the complaint, and therefore, it cannot be said that he was at fault. He further submitted that his Advocate was at fault and that the Respondent should not suffer for the Advocate's fault.

6. Upon a query by the Court, the learned Advocate for the Respondent failed to point out the said ground in the Application at Exhibit-154 which he had tried to argue. Similarly, when queried, he failed to explain how the Respondent was unaware of the contents of the affidavit of evidence filed in Marathi. The thrust of the learned Advocate for the Respondent's argument was that the complainant should not suffer for the fault of his Advocate. Lastly, he submitted that the order passed by the learned Sessions Court is just and proper and that no interference is required therewith. Hence, he urged for dismissal of the Petition.

7. Having considered the rival contentions of the parties and having gone through the record, at the outset, the short question that arises before me is "*whether the Respondent was entitled to recall himself as a witness under Section 311 of the Code of Criminal Procedure, 1973*" (for short, *"Cr. P.C."*).

8. While considering the controversy in the matter, it would be appropriate to reproduce Section 311 of the Cr. P.C. as under:

> *"311. Power to summon material witness, or examine person present.*
>
> *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or* ***recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case****."*

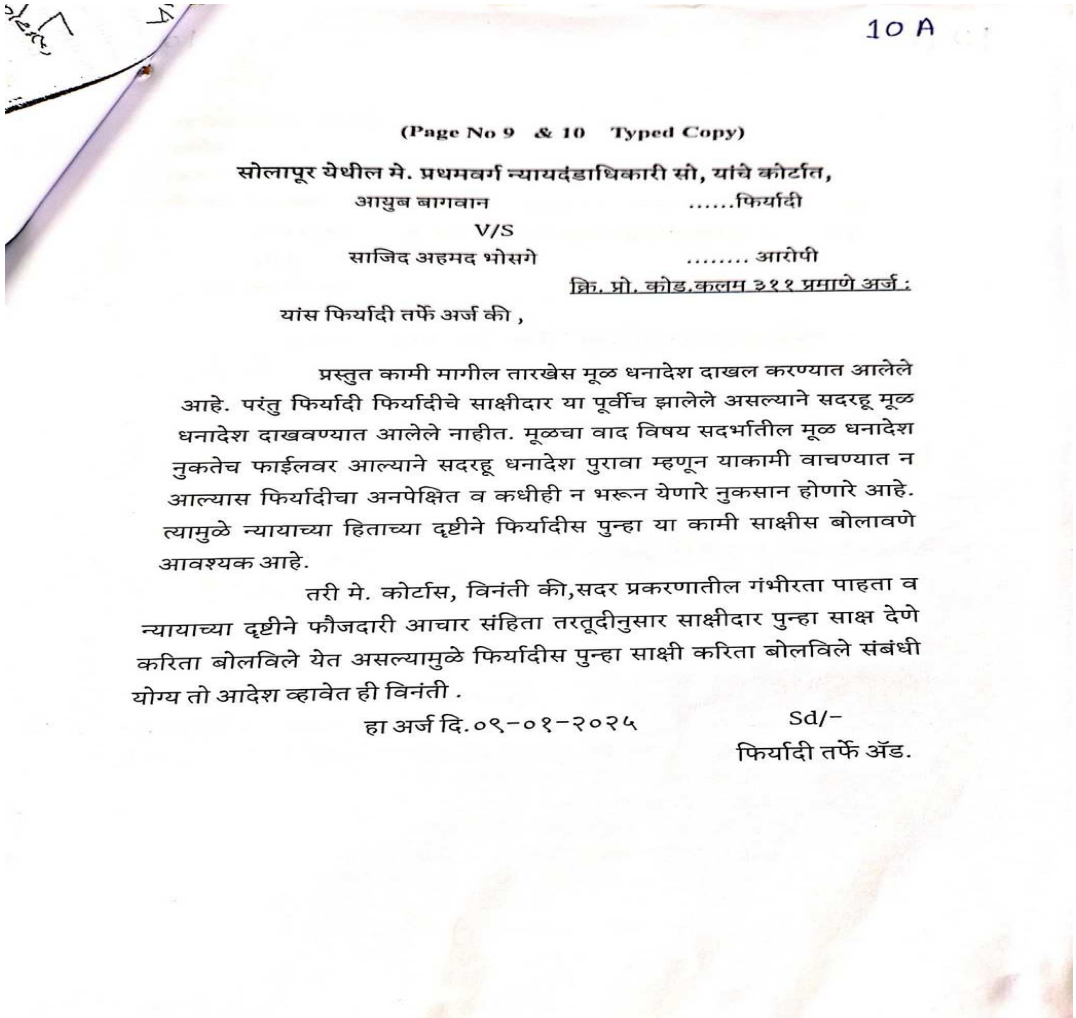
9. A bare perusal of Section 311 indicates that any witness can be recalled and re-examined by any Court at any stage of the inquiry, trial or other proceedings under this Act, if his evidence appears to it to be essential to the just decision of the case.

10. Undisputedly, in the case at hand, the evidence of the Complainant/Respondent and his witnesses was concluded in the year 2017, and the Respondent's statement under Section 313 was also recorded. The case was posted for final arguments. The Accused also filed his written argument in the Court.

11. Pursuant to the learned Advocate for the Petitioner raising the ground that the Respondent had failed to prove the cheque in question, the Respondent moved the application at Exhibit 154. The said facts can be gathered from the additional affidavit dated 7th October, 2026, filed by the Petitioner. During arguments, the learned Advocate for the Respondent came to know that the cheque had been incorrectly produced on record; accordingly, an application was filed to recall the witness to prove the said

cheque. The learned Magistrate rejected the application vide order dated 9th January, 2025, holding that the Complainant was not permitted to recall the witness to fill the lacuna in the case. Aggrieved by the said order, the Respondent preferred the revision.

12. While considering the controversy in the matter, it would be appropriate to reproduce the application at Exhibit-154 as under:



10 A

(Page No 9 & 10 Typed Copy)

सोलापूर येथील मे. प्रथमवर्ग न्यायदंडाधिकारी सो, यांचे कोर्टात,

आयुब बागवान .....फिर्यादी

V/S

साजिद अहमद भोसगे ..... आरोपी

फौ. प्रो. कोड,कलम ३११ प्रमाणे अर्ज :

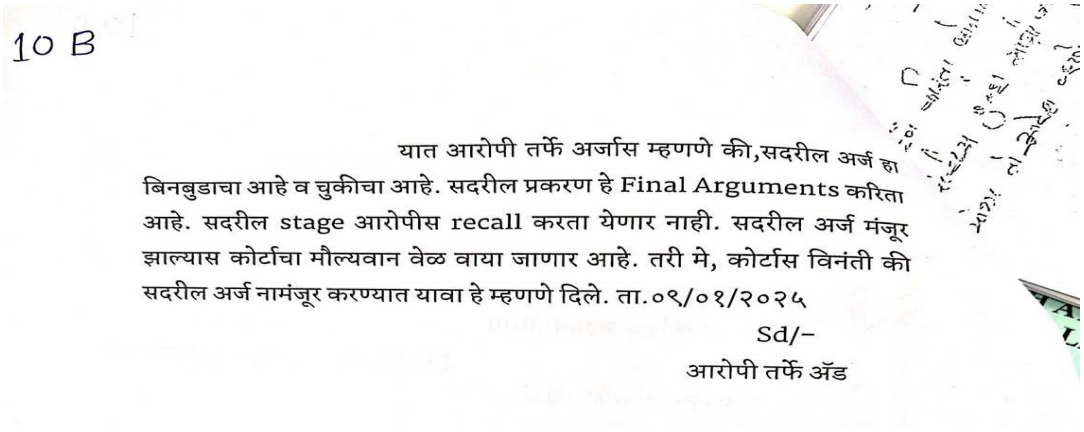
यांस फिर्यादी तर्फे अर्ज की ,

प्रस्तुत कामी मागील तारखेस मूळ धनादेश दाखल करण्यात आलेले आहे. परंतु फिर्यादी फिर्यादीचे साक्षीदार या पूर्वीच झालेले असल्याने सदरहू मूळ धनादेश दाखवण्यात आलेले नाहीत. मूळचा वाद विषय सदर्भातील मूळ धनादेश नुकतेच फाईलवर आल्याने सदरहू धनादेश पुरावा म्हणून याकामी वाचण्यात न आल्यास फिर्यादीचा अनपेक्षित व कधीही न भरून येणारे नुकसान होणारे आहे. त्यामुळे न्यायाच्या हिताच्या दृष्टीने फिर्यादीस पुन्हा या कामी साक्षीस बोलावणे आवश्यक आहे.

तरी मे. कोर्टास, विनंती की,सदर प्रकरणातील गंभीरता पाहता व न्यायाच्या दृष्टीने फौजदारी आचार संहिता तरतूदीनुसार साक्षीदार पुन्हा साक्ष देणे करिता बोलविले येत असल्यामुळे फिर्यादीस पुन्हा साक्षी करिता बोलविले संबंधी योग्य तो आदेश व्हावेत ही विनंती .

हा अर्ज दि.०९-०१-२०२५ Sd/-

फिर्यादी तर्फे ॲड.


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यात आरोपी तर्फे अर्जास म्हणणे की,सदरील अर्ज हा बिनबुडाचा आहे व चुकीचा आहे. सदरील प्रकरण हे Final Arguments करिता आहे. सदरील stage आरोपीस recall करता येणार नाही. सदरील अर्ज मंजूर झाल्यास कोर्टाचा मौल्यवान वेळ वाया जाणार आहे. तरी मे, कोर्टास विनंती की सदरील अर्ज नामंजूर करण्यात यावा हे म्हणणे दिले. ता.०९/०१/२०२५

Sd/-

आरोपी तर्फे ॲड

13. A bare perusal of the application does not indicate that the Respondent/Complainant has assigned any reason in the application to recall the witnesses. The application does not indicate why the original cheque was not produced before the Court. In the absence of a cogent reason to recall the witness, recalling the witness is not proper. On the contrary, it is evident that the application was filed casually, without recording any reasons for recalling the witness. After considering the application, the learned Magistrate rejected it for the reasons recorded in paragraph 3. I would like to reproduce paragraph 3 of the order as under:

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(Page No.11 Typed Copy)

Order Below Exh. 154 in S.T.C. No. 1172/2014
(Ayyub Bagwan v/s Sajid Bhosage)
MHSO030015392014

This is an application moved under Section 311 of the Code of Criminal Procedure for recalling the Complainant for proving the cheque in question. The application is not supported by the affidavit of the Complainant. The other side has filed say overleaf the application and strongly resisted the same same on the grounds that the application is not tenable in the eyes of law. It is filed at belated stage. The matter is fixed for final arguments. Therefore, the matter cannot be taken in anticlockwise direction and finally it is prayed that the application may kindly be rejected.

2. Heard Shri. Kulkarni, Ld. Advocate for the Complainant and Smt. Anjali Babare, Ld. Advocate for the Accused at sufficient length. Perused the record carefully.

3. Perusal of record reveals that the matter is fixed for final arguments. At this stage, the present application for recalling the Complainant for proving the cheque in question is filed. The matter is pretty old of the year 2014 i.e. more than 10 years old pending for final adjudication. As per Section 311, the Court has power to recall any witness already examined or any witness present before the

12 B

(Page No.12 Typed Copy)

Court. However, the said provision cannot be invoked for filling of the lacuna in the case. Non proof of cheque in question is a lacuna of the case of the Complainant which cannot be allowed to fill up at this later stage. There is inordinate delay in proving the document. Under such circumstances, by filing the application, the Complainant cannot be allowed to fill up the lacuna in the present case. With this observation, I pass the following order.

ORDER

The application seeking recalling of the Complainant for proving the cheque in question is rejected with costs of Rs. 500/- to be paid to the Accused.

Date - 09/01/2025

Sd/-
(Vinayak M. Redkar)
Judicial Magistrate, F. C.,
(Court No. 3), Solapur.

14. I have gone through the order of the learned Additional Sessions Judge, Solapur. Upon going through the impugned order, it is revealed that the learned Additional Sessions Judge, without recording any cogent reason as to why he had set aside the reasoned order passed by the learned Magistrate, merely observed that the photocopy of the original cheque in question was already annexed to the complaint and that due to the sheer inadvertence on the part of the learned Advocate for the Complainant, there may have been an accidental omission. However, it does not appear from the record on which basis the learned Additional Sessions Judge recorded the said finding, when the application at Exhibit-154 is silent on the said point, and no grounds have been stated in the said application for recalling the witness. Therefore, the finding recorded by the learned Additional Sessions Judge appears to be contrary to the material on record.

15. The learned Sessions Court further observed that merely because the cheque has not been proved at the stage of the trial, but before the commencement of the arguments, it cannot be said that the Complainant should be deprived of the opportunity to prove the same. I disagree with the said finding, as the entire complaint under Section 138 of the N.I. Act is based on the cheque in question. If the cheque in question was not proved by the complainant therein, then certainly it would not be appropriate to permit the complainant to fill up the lacuna by recalling him to prove the said

cheque, when the Petitioner had already filed the written notes of argument before the learned Trial Court and the matter was kept for the argument of the learned Advocate for the Complainant. Apart from that, in the absence of any cogent reason mentioned in the application, it would not be appropriate to recall the witness at the complainant's own whim. Thus, the order passed by the learned Additional Sessions Judge is per se contrary to the material on record and unjust and, therefore, liable to be set aside in this Petition.

16. Thus, it is revealed that the learned Sessions Court has erred in reversing the reasoned order passed by the learned Magistrate without recording any cogent reason. Therefore, the same cannot be sustained in the eyes of law and is liable to be set aside. As such, the Petitioner has made out a case for exercising the inherent powers of this Court.

17. As a result, ***the Petition is allowed in terms of prayer clause (b).***

18. Accordingly, the order dated 28th October, 2025, passed by the learned Additional Sessions Judge, Solapur, in Criminal Revision No. 52 of 2025 is hereby quashed and set aside, and the order passed by the learned Magistrate is restored.

19. The Rule is made absolute in the above terms.

20. Inform the concerned Court accordingly.

21. *The Writ Petition stands disposed of.*

(ABHAY J. MANTRI, J.)