# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# NAGPUR BENCH, NAGPUR.

## CRIMINAL APPLICATION (APL) NO. 775 OF 2025

Harish s/o Laxmandas Parvani
.Vs.
Dhum Sales Corporation, A proprietorship firm thr. its Proprietor Shri Dinesh Manoharlal Kruplani

WITH

## CRIMINAL APPLICATION (APL) NO. 1157 OF 2025

Harish s/o Laxmandas Parvani
.Vs.
Dhum Sales Corporation, A proprietorship firm thr. its Proprietor Shri Dinesh Manoharlal Kruplani

| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders. | Court's or Judge's orders. |
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Mr N.R. Tekade, Advocate for the applicant in both applications.
Mr. S.A. Mohta, Advocate for non-applicant in both applications.

**CORAM : URMILA PHALKE JOSHI, J.**
**DATE : 16.01.2026**

Heard.

2. By these applications the applicant who is original accused in Summery Case No.5513/2018 and 2925/2019 challenging the order passed by the Additional Chief Judicial Magistrate, Court No.1, Akola rejecting the application filed under Section 91 and under Section 311 of the Code of Criminal Procedure for seeking permission to examine the Income Tax Officer in

the said complaint ask to rebut the presumption.

3. Heard learned counsel for the applicant, who, submitted that the defence of the accuse in the application is that the original complainant is running the money lending business and to prove the same he has already examined Registrar, Co-operative Society. The Registrar Co-operative Society has also raided his office and seized many documents and therefore, the accused in support of his defence intends to examine Income Tax Officer. He further submitted that recently the offence is also registered against the complainant under Section 139 of the Money Lending Act. Thus, it also substantiates the contention of applicant that the original complainant is running the money lending business and out of that money lending business he obtained the cheques from the present applicant against the loan of an excessive amount and to prove whether the complainant is having sufficient means to lend the money to various persons the examination of the Income Tax Officer is material. In view of that, the order passed by the Additional Chief Judicial Magistrate is wrong, illegal and liable to be quashed and set aside.

4. Per contra learned counsel for the non-applicant vehemently submitted that this Court has already permitted the present applicant to examine the Registrar Co-operative which he has examined. Now only to prolong the matter this application was filed to seek permission to examine the witness. If the complainant fails to prove that he has sufficient means to provide mandatory assistance to the present applicant, the compliant could be dismissed and therefore, the application deserves to be rejected.

5. After hearing both the parties and perusal of record the order of the Magistrate also shows that Sub Registrar Cooperative Societies, Akola may initiate the proceedings against the accused whether there is substance in the allegation by the complainant is running money lending business or not or whether a raid was conducted is not is a matter of evidence. Admittedly in view of Section 139 of the Negotiable Instruments Act, the burden is on the present applicant to rebut the presumption far as the offence punishable under Section 138 of the Negotiable Instrument Act is concerned.

6. At this stage in view of the previous order of

this Court the Registrar Cooperative Society is already examined by the present applicant. Now one crime is also registered against the complainant under the Money Lending Act, under Section 39. Therefore, there is some substance in the contention of the present applicant that the original complainant is running a money lending business. At this stage there is nothing on record to show that what type of prejudice would be caused to the non-applicant by examining the said witness. Therefore, in the interest of justice and in the interest of fair trial an opportunity is to be granted to the applicant for a just a decision of a case to examine witness from the office of Income Tax Department. At the same time it is necessary to observe that the present prayer can be made by the applicant at the initial stage also which he has not met and it is also apparent that after first application was allowed this second application is filed by the present applicant. This also shows his intention to prolong the matter.

7. In view of that criminal application is allowed.

(i) Applicant shall examine the witness without seeking any adjournment

(ii) Trial Court shall not grant any

adjournment to the present applicant except there are exceptional circumstance.

(iii) It is made clear that trial Court shall not grant any unnecessary adjournment and the matter is to be disposed of expeditiously as it already fixed for the judgment.

(iv) Parties to cooperate to the trial Court to dispose of the application.

(v) The applicant is not further permitted to file any other application to examine any counter witnesses.

(vi) Both the applications stand disposed of.

**(URMILA PHALKE JOSHI, J.)**

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