



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

CRIMINAL APPLICATION (APL) NO. 1463 OF 2025

Ajay Rampal Sarada,
Aged Major, Occ: Business,
R/o Flat No. 502, Nisarg Parking,
Toshniwal layout, Near Shakil
Garage, Akola Tq. & District -Akola,
Police Station- Civil Lines, Akola. **APPLICANT**

Versus

Anup Ramchandra Goenka,
Aged 58 Yrs., Occ: Business,
R/o Goenka House, Alsi Plot, Akola
Tq. & District -Akola,
Police Station- Khadan, Akola. **NON-APPLICANT**

Mr. S.P. Ghatol, Advocate for the Applicant.
Mr. V.A. Lohia, Advocate for the Non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 18th FEBRUARY, 2026.

ORAL JUDGMENT :-

1. Heard.
2. **ADMIT.** Heard finally by the consent of learned
Counsel for the respective parties.

3. By this Application, the Applicant is challenging the order passed on 11.06.2025 below Exh.1 and order dated 28.08.2025 passed below Exh.128 in S.C.C. No.4798/2017, whereby the Application for setting aside no defence evidence order came be rejected.

4. The Respondent is the original Complainant and filed a complaint against the Applicant bearing S.C.C. No.4798/2017 under Section 138 of the Negotiable Instruments Act. It is alleged in the complaint that the accused/Applicant is the partner of Shree Sarda Oil Mill and the Respondent Nos. 2 to 4 are the partners of the said firm. The Complainant wanted to deposit his amount, and after inquiring, he came to know that the accused used to accept the deposits. The Complainant approached the accused with one broker Mr. Manoj Khandelwal and deposited the amount. Against the said deposit the cheque in question was issued by the present Applicant and on presenting before the same in the Bank returned with endorsement as dishonoured, and therefore, after complying with the necessary compliances the complaint came to be filed against the present Applicant.

5. The learned Magistrate has took the cognizance of the said complaint and issued summons to the present Applicant. The plea of the present Applicant was recorded and the Complainant has adduced the evidence. Thereafter the opportunity was been granted to the present Applicant also to adduce the evidence but he has not adduced the evidence and the matter was kept for the arguments. As the Applicant has not turned to submit his arguments through his Counsel, and therefore, after giving an opportunity the order of no evidence and no argument was passed. Therefore, the Applications below Exhs. 1 and 128 were filed to set aside the said order. The same came to be rejected by the detailed order by the Additional Chief Judicial Magistrate, Court No.8, Akola.

6. Being aggrieved and dissatisfied with the same the present Application is preferred by the present Applicant.

7. Heard learned Counsel for the Applicant, who submitted that earlier also the complaint was filed against the present Applicant in Criminal Application (APL) No.796/2019, but he was discharged. Similar is the present case also. He further submitted that, no further opportunity was granted to

the present Applicant to adduce his evidence as well as for submitting his final arguments. Therefore, in the interest of justice, his request for submitting his final arguments requires to be considered.

8. On the contrary, the learned Counsel for the Non-applicant placed on record the entire roznama and submitted that, the roznama which shows that the complaint is pending for the detail evidence from 27.02.2024 till passing of this order. This itself is sufficient to show that more than sufficient opportunity is granted to the present Applicant. The complaint is pending since last 9 years before the Additional Chief Judicial Magistrate, and therefore, the Additional Chief Judicial Magistrate by considering the entire record, passed the detailed order by assigning the reasons and hence there is no merit in the Application, and therefore, the Application deserves to be rejected.

9. On hearing both the sides and on perusal of the entire record as well as roznama it reveals that, on 09.01.2017 the complaint was filed against the present Applicant. On 16.01.2024, the evidence of Complainant was closed by passing

order below Exh.109. On 02.02.2024, statement of the Applicant was recorded vide Exh. 115 under Section 313 of Cr.PC. On 27.02.2024, the Applicant has filed list of witnesses vide Exh.116. On 18.03.2024, the Applicant filed an application for issuance of summons to bank witness which came to be allowed. The bank witness was present before the learned Trial Court but the Applicant and his Counsel failed to remain present before the learned Trial Court, and therefore, the evidence of the bank witness was not recorded. On 21.08.2024, the evidence of Applicant was closed by the learned Trial Court and the matter was posted for arguments. On 09.09.2024, the Applicant was present before the learned Trial Court and failed to take any steps for seeking the presence of the witnesses. Thereafter from 04.11.2024 to 03.02.2025 the Applicant did not remain present and the matter was posted for his arguments and finally on 28.08.2025 by observing all these aspects the application came to be rejected.

10. There is no dispute that the complaint is pending since 09.01.2017. There is no dispute about the fact that, more than sufficient opportunity is granted to the present Applicant

to adduce his evidence and make his final submissions. It is apparent from the record that, the criminal complaint is prolonged due to the absence of present Applicant and his Counsel. It is true that, the parties are not to be allowed to held up the Court proceedings as per their own whims. However, considering the specific charges under Section 138 of the Negotiable Instrument Act and to give him a final opportunity he shall appear before the learned Trial Court on 25.02.2026 and shall make his final submissions. In the interest of justice, a final opportunity is granted to the present Applicant. If he fails to make his submissions on 25.02.2026 before the Trial Court, the Trial Court shall proceed by delivering the judgment. In view of that, I proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
- ii. The Applicant shall remain present before the Additional Chief Judicial Magistrate, Court No.8, Akola for making his final submissions on 25.02.2026. On failure to appear before the Additional Chief Judicial Magistrate, Court No.8, Akola, the learned Trial Court shall proceed to pass the judgment on its own merits.

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

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte