

MHAH170039472022

**SCC No.856/2022**Shaliram Suklal Chitte Vs. Pranav  
Jalindar Tumbare**ORDER BELOW EXH.38**

1. Perused application and say on it. Heard both sides. Complainant has filed present application to permit him to lead further oral evidence. The present case was for recording of statement of accused as per section 313 of the Code of Criminal Procedure and at that stage complainant has filed present application for leading further oral evidence. According to the complainant the cheque return memos in the present case are lost which are necessary to prove by bank. Hence, he prayed to permit him to give further oral evidence.

2. In the light of contents of the application it is necessary to mention here that at one place complainant is saying that return memo required to be proved by bank and at second place he is seeking permission to lead his oral evidence. If according to the complainant the bank memos are required to be proved by the bank then it is unable to understand why he is intending to lead his further oral evidence. As per Section 146 of the Negotiable Instrument Act Bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, is prima-facie evidence of dishonour of cheque. In the present case photocopy of memos of disputed cheques which are filed on record having no official mark. Under such circumstances cheque return memos can be proved by calling bank witness with relevant memos having official mark. Hence,

there appears no purpose to permit the complainant to lead his further oral evidence.

3. However, the present case is under the provision of Section 138 of the Negotiable Instrument Act. Therefore, for just decision of the case it is necessary to come on record whether the disputed cheques have been dishonoured or not. Under such circumstances liberty requires to be given to complainant to call bank witness for examination with relevant memos.

4. According to the accused complainant has filed present application to fill up the lacuna after closing evidence. However, as per Section 146 of the Negotiable Instrument Act there is presumption of dishonour of cheque to the memo having official mark. Hence, permitting the complainant to call the bank witness with cheque return memo will not amount filling up lacuna. On the other hand, it will help to decide the case on merit. Further, accused will get the opportunity to cross-examine the witness. Hence, considering the facts and circumstances instead of giving permission to complainant to lead oral evidence liberty to call the bank witness with memos for examination requires to be given to the complainant for just decision of the case by imposing some costs to the complainant as he was not diligent before closing his evidence. In the result, I pass the following order;

#### **ORDER**

1. Prayer of giving permission to lead oral evidence of complainant is rejected.

2. Complainant is at liberty to call the bank witness of relevant bank for examination with disputed cheque return memos, on payment of costs of Rs.500/- to accused.
3. Application is disposed off.

Date:- 02/01/2026.

( N. N. Joshi )  
Addl. Chief Judicial Magistrate,  
Rahata, Dist.Ahmednagar

<b><u>CERTIFICATE FOR UPLOADING TO CIS</u></b>	
I affirm that the contents of this P.D.F File are same word to word, as per the original.	
Name of the Court	: <b>Smt. Neha N. Joshi</b> 2 <sup>th</sup> Jt. Civil Judge Senior Division & Addl. Chief Judicial Magistrate, Rahata, Dist.Ahmednagar.
Name of the Stenographer	: <b>Amol S. Nannaware</b> Stenographer (Grade-II)
Dictated on computer	: 02/01/2026
Typed on	: 02/01/2026
Checked & Signed on	: 03/01/2026