



Summons Cases SS/5800313/2021
SHAGUN GOLD PROPRIETOR - MR. ARVIND
KANHAYALAL PARMAR Vs. MR. ANKUSH S. JAIN

IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS),
58TH COURT, BANDRA, MUMBAI
ORDER BELOW APPLICATION EXH.38

This is an application for discarding affidavit in lieu of Examination in Chief for non compliance of provision of High Court Manual, moved on behalf of accused.

2. Application is strongly objected by the advocate for complainant vide reply.

3. Heard both sides.

4. Perused proceeding. Affidavit in lieu of Examination in Chief is filed in the year 2022. Later on parties mutually settled the dispute out of court and consent terms filed on 05.12.2023. Today matter is for cross examination of the complainant who is present before the Court for the reason of non compliance of consent terms.

5. First of all the application for cancellation of Warrant moved on behalf of accused at Exh.35 itself shows that accused has mutually settled the matter in terms of consent terms but failed to act upon it due to non arrangement of amount in stipulated period. Secondly, the application is moved for discarding evidence affidavit seems to be filed only to protract the litigation without conducting cross examination. Apart, even if the affidavit in lieu of Examination in Chief might not be as per the provisions of High Court Manual, the accused has an opportunity to cross examine the witness and raise the relevant defence on the point of hearsay knowledge of the witness and

personal knowledge. The evidence affidavit can not be discarded merely to prolong the trial on technical grounds. Hence, I pass following order.

ORDER

1. Application is rejected.
2. Advocate for accused to take note that no adjournment will be granted on next date and further order will be passed if he failed to conduct cross examination.
3. The application for issuing Non Bailable Warrant against the accused is kept in abeyance till next date.
4. Adjournment application is granted subject to cost of Rs.2,000/- to be paid to the complainant.
5. Order be uploaded on CIS for the knowledge of the parties.
6. Order dictated and pronounced in open court.

Date : 17.02.2025

(M. P. Saraf)
Judicial Magistrate(First Class),
58th Court, Bandra, Mumbai.
J.O.Code: MH01362

CERTIFICATE

I affirm that the contents of this P.D.F file Order are same, word to word as per the original Order.

Name of Stenographer	: Mrs. Aditi Ravikiran Dalvi
Court	: Judicial Magistrate(First Class), 58 th Court, Bandra, Mumbai.
Dictated in open court on	: 17.02.2025.
Transcribed and Typed on	: 17.02.2025.
Order printed and Signed on	: 17.02.2025.
Order Uploaded on	: 17.02.2025.