

Order below Exh. 59 in S.C.C. No.96/2022
(CNR No.MHRT080001892022)

This is a proceeding concerning an offence punishable under section 138 of the Negotiable Instruments Act, 1881. The matter is pending for judgment.

02. By the present application, the accused has prayed for leave to make statement under section 313 of the Code of Criminal Procedure, 1973 ('the Code' in short).

03. For the purpose of present application, it may be noted that the present complaint is filed on 10/03/2022. The particulars of offence are recorded on 07/12/2022. As per the pursis filed by the complainant at Exh. 50, his evidence is closed on 04/11/2024. On 27/11/2024, 03/12/2024, 04/01/2025, 24/01/2025 and 28/01/2025, the matter was posted for examination of the accused vide section 313 of the Code. However, the accused did not remain present on any of those dates. Thus, his statement could not be recorded. On 28/01/2025, as per order below Exh. 01, this Court has directed that the matter shall proceed without examination of the accused under section 313 of the Code and without his evidence. The matter was then posted for final arguments. On 07/02/2025, when the matter was posted for final arguments, the accused was absent. As per application made by learned advocate for the accused, for dispensing personal attendance of the accused and for adjournment, the matter was adjourned to 20/02/2025. On 20/02/2025 also, the accused was absent. However, learned

advocates for the complainant and accused advanced final arguments. The matter is thus posted for judgment on this day. Then, present application is made.

04. It is contended by the accused that due to his health issues and due to his difficulties in connection with his employment, he could not remain present before the Court. Thus, he prayed for an opportunity to explain incriminating circumstances appearing in evidence against him.

05. The application is strongly opposed by the complainant on the ground that reasons stated are false. Moreover, final arguments are already advanced. Present application is made only with a view to prolong the matter. Thus, the complainant has prayed for rejecting the application.

06. Perused the record. Heard both sides.

07. Pertinently, object behind the provision of section 138 of the Act is to ensure authenticity of negotiable instruments. The provision aims to ease the commercial and business transactions. The Act comprises provisions to ensure that a Civil transaction of return of payment shall not easily result in breach of penal consequences. Thus, safeguards in the form of demand notice prior to filling of the complaint and grace period of 15 days from service of notice to repay the amount, are provided.

08. Moreover, the Act is a special legislation. To some extent, it deviates from general procedure as contemplated by the Code. To illustrate, it may be noted that the affidavit can be filed by

complainant as per section 145 of the Act. Evidence of affidavit is not generally permitted by the Code, except in cases of evidence of formal nature as provided by section 296 of the Code. However, evidence on affidavit by the complainant is a rule as per the Act. Moreover, the affidavit so filed as per section 145 of the Act, shall be an affidavit for the purpose of section 200 of the Code which is generally known as verification statement of the complainant. As held by Hon'ble Supreme Court in the case of **Indian Banks Association Vs. Union of India (AIR 2014 SC 2528)**, such affidavit shall also be an evidence affidavit and any new affidavit need not be filed to adduce evidence. Further, the Act provides that the cases pertaining to offence under section 138 shall be disposed of within six months.

09. The provisions of the Act are interpreted by the Hon'ble Supreme Court and by the Hon'ble High Courts in the manner that object of the Act can be taken ahead. Any undue delay in disposal of such cases frustrates the object behind the provision of section 138.

10. The facts noted above would show that the accused has delayed the proceeding. He avoided his presence before the Court.

11. Having noticed so, it also needs to be noted that, section 313 of the Code aims to ensure an opportunity to the accused to explain incriminating circumstances appearing against him in evidence.

12. The balance needs to be maintained. No accused can be

allowed to take the procedure as granted. At the same time, every reasonable opportunity needs to be granted to the accused to put his defense.

13. Considering all these circumstances, one opportunity can be granted to the accused. However, he shall be made liable to pay costs to compensate for delay occurred. In the circumstances, I pass following order -

ORDER

1. Application is allowed subject to costs of Rs. 6000/- (Rupees Six Thousand).
2. Amount of Rs. 3000/- (Rupees One Thousand), out of the total cost amount shall be paid to the complainant. Remaining amount of cost shall be deposited for crediting to the account of Hon'ble District Legal Services Authority, Ratnagiri.
3. The amount of cost shall be paid till next date.
4. If the amount of costs is not paid, the application shall stand rejected.
5. Even if meanwhile the matter is settled between the parties, payment of cost amount which is to be credited to DLSA, Ratnagiri, shall be a pre-condition.

Dated : 24/02/2025

(B. D. Tare)
Judicial Magistrate F. C.
Deorukh.

CERTIFICATE

order in SCC no. 96-2022

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

Name of the Stenographer : S. A. Bhale

Court name : Civil Judge, J. D. and J.M.F.C., Deorukh.

Date : 24/02/2025

Order signed by the presiding officer on : 24/02/2025

Order uploaded on : 25/02/2025