

Order below Exh.48 in Criminal Appeal No: 02/2023

Popatrao Vyankatrao Patil

Vs

Sanjay Vishnu Raut

The appellant has filed this application under Section 432 of the Bhartiya Nagarik Suraksha Sanhita, 2023 for permission to lead further evidence.

2. It is contended that the appellant-accused has executed the deed of power of attorney in favour of the respondent No.1 / original complainant for some transactions and handed over his cheque-book of his signature to him. The said facts were admitted by the complainant-respondent No.1 in his cross-examination. So the appellant was under impression that it is not necessary to lead further evidence to prove the said fact. Further the appellant is illiterate and from the farmer's family. He had no knowledge of the law and also no knowledge that he can lead independent evidence. So to bring on record the real fact it is necessary to lead further evidence. Hence, this application.

3. The complainant-respondent No.1 filed reply by contending that this proceeding is pending since year 2015. The transaction in dispute was of the year 2007 and 2008. The appellant is cunning person. He is agent in real estate. He has replied to the cheque-demand notice. He is not illiterate or from farmer's family. On the contrary, he is habitual to the legal

proceedings, police station and execution of the documents. Only to prolong the matter, this application has been filed. So urged to reject the application.

4. Heard the Ld. Advocates for both the sides. Gone through the material on record.

5. On 16.12.2008, the complainant/respondent No.1 lodged complaint under Section 138 of the Negotiable Instruments Act against the appellant/accused by contending that for the repayment of the hand-loan amount, the appellant/accused issued cheques on 16.08.2008 and 19.09.2008. The said cheques were presented by the complainant for encashment, however, they dishonoured.

6. On perusal of the material on record it further appears that, the complainant/respondent No.1 had issued cheque-demand notice to the accused/appellant. The accused replied to the said notice. In the notice reply, the accused has alleged about the forgery of his signature on cheque-book and other documents.

During trial, the complainant led his evidence. The statement of the accused under Section 313 of the Code of Criminal Procedure was recorded on 03.09.2014. The question No.6 was put to the accused that as to why the witnesses are deposing against him. The accused/appellant replied that the

witnesses deposed falsely to grab money. The question No.7 was whether he has to lead evidence on oath and the question No.8 was whether he has to examine any other witnesses in his defence. The accused/appellant replied that 'no'. To the question No.9 that, whether he has to say anything more, the appellant/accused has replied that he is not liable to pay single rupee to the complainant. In the year 2008, he has executed a power of attorney and handed over the cheque-book of his signatures to the complainant and the complainant misused two cheques from the said cheque-book and filed false case.

7. In para No.4 in the reply to the cheque amount demand-notice it is contended that one document of power of attorney was executed and notarized before the Notary-Advocate. Thus, it is clear that the appellant had knowledge about the said fact since before filing of the complaint under Section 138 of the Negotiable Instruments Act by the complainant. Further the specific questions were put to the appellant in the statement recorded under Section 313 regarding whether he has to lead evidence on oath or to examine any other witness in his defence, to which the accused/appellant replied in the negative. In such circumstances, there is no substance in the contentions of the appellant that he had no knowledge of the fact that he can lead an independent evidence and he had no knowledge of the law or legal procedure.

8. This is an appeal against the conviction and sentence under Section 138 of the Negotiable Instruments Act. The appeal was presented on 06th October 2015. It is old one, more than 10 years. According to the complainant/respondent No.1, it is filed only to prolong the matter and there appears substance in this submission on behalf of the respondent No.1. The cheques in dispute were issued in the year 2008. The accused-appellant has made his defence clear in the notice reply given in the year 2008. The trial was proceeded and in the appeal after 2 and ½ decade after the transaction, this application is moved. There is no substance in the reasons mentioned for filing such application at appellate stage. Hence, the following order.

ORDER

The application is hereby rejected.

Wai
Date: 15.01.2026

(D.B.Mane)
Addl. Sessions Judge, Wai.

Order below Exh.51 in Criminal Appeal No: 02/2023

The appellant has filed this application for permission to produce the documents to support his contentions in the application Exh.48.

2. This Court has passed the order below Exh.48 and rejected the said application. So, nothing remains in this application. Hence, the following order.

ORDER

The application is hereby rejected.

Wai
Date: 15.01.2026

(D.B.Mane)
Addl. Sessions Judge, Wai.

Order below Exh.54 in Criminal Appeal No: 02/2023

Today the matter is on the stage of passing order below Exhs. 48 and 51 in this appeal. There is no question of granting adjournment. Hence, the application is filed.

Wai
Date: 15.01.2026

(D.B.Mane)
Addl. Sessions Judge, Wai.