

MHWS100003342023



ORDER BELOW EXH.53

1. The complainant has filed the present application at Exh.53 praying that the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 be dispensed with, on the ground that the accused has remained continuously absent from the proceedings without any sufficient cause.
2. It is the contention of the complainant that despite several opportunities, the accused has failed to remain present before the Court. The complainant's evidence has already been recorded. The accused has also failed to cross-examine the complainant and, therefore, the right of cross-examination has already been closed by a separate order. It is further submitted that the accused has neither appeared before the Court nor filed any reply to the present application. Hence, the application is proceeded with in absence of the accused.
3. Record reveals that though sufficient opportunities were granted, the accused has remained absent without any justifiable reason. No application seeking exemption from personal appearance or explaining such absence is filed. Even today, there is no representation on behalf of the accused and no say is filed to Exh.53.
4. The learned counsel for the complainant has relied upon the judgment of the Navneet Singh Gogia & Anr. v. State of Maharashtra & Anr., reported in **2025 (1) Bom C.R. (Cri.) 525**. In the said decision, the Bombay High Court considered the precise issue whether, in a prosecution under Section 138 of the Negotiable Instruments Act, the trial Court can proceed in the absence of the accused, dispense with recording of the statement under Section 313 Cr.P.C. and conclude the trial. The Court held that where the accused, despite having knowledge of the proceedings, deliberately remains absent and does not participate in the trial, such conduct amounts to waiver of the valuable opportunity available under Section 313 Cr.P.C. The Court observed that the accused cannot be permitted to frustrate the object of summary trial under Section 138 of the Negotiable Instruments Act by intentionally remaining absent. It was further held that where the absence is deliberate and persistent, the Magistrate is justified in proceeding with the trial, dispensing with the statement under Section 313 Cr.P.C., and

deciding the case on the basis of the evidence available on record.

5. The ratio laid down in the aforesaid judgment squarely applies to the present case. Here also, the accused initially appeared before the Court but thereafter continuously remained absent without assigning any valid reason. The complainant has completed his evidence. The accused failed to cross-examine the complainant despite opportunities and consequently his right of cross-examination has been closed. Even after filing of the present application, the accused has neither appeared nor filed any reply. The conduct of the accused clearly demonstrates that he is avoiding the proceedings and is not interested in participating in the trial.
6. The object of Section 138 of the Negotiable Instruments Act is expeditious disposal of cheque dishonour cases. If the accused is permitted to stall the proceedings by remaining absent, the very legislative intent would be defeated. The right under Section 313 Cr.P.C. is intended to afford an opportunity to explain incriminating circumstances. However, such right cannot be converted into a weapon to obstruct the course of justice. When the accused voluntarily abstains from the proceedings despite repeated opportunities, he cannot later contend that such opportunity was denied to him.
7. In view of the above facts and the law laid down by the Bombay High Court in **Navneet Singh Gogia (supra)**, this Court is satisfied that sufficient grounds exist to dispense with recording the statement of the accused under Section 313 Cr.P.C.

ORDER

1. Application Exh.53 is **allowed**.
2. Recording of the statement of the accused under Section 313 of the Code of Criminal Procedure is hereby **dispensed with**.
3. The matter be proceeded further for final arguments in accordance with law.

Place : Malegaon.

Date : 02.07.2026.

[A.S.Koshti]

J.M.F.C. (Court No.2) Malegaon.

Dist. Washim.