

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 109 OF 2015

Narayan s/o. Purushottam Sarda

....Petitioner.

Versus

Kiran Rameshlal Bhandari

....Respondent.

Mr. S.S. Rathi, Advocate for petitioner.

Mr. Shyam C. Arora, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 17th June, 2015.

ORDER :

1. The petition is filed to challenge the order made by the learned Judicial Magistrate, First Class, Aurangabad in Cri.M.A. No. 5639/2013 on Exh. 31. The private complaint is filed by the respondent in the Court of J.M.F.C., Aurangabad for the offence punishable under section 138 of Negotiable Instruments Act. The recording of evidence of complainant is over and it is the stage of giving defence evidence. In Exh. 31, the accused requested the learned J.M.F.C. to send the cheque with specimen hand writing to the expert for comparison. He wants to prove that the cheque was only signed by him and the contents are not filled by him. Both the sides are heard.

2. The learned counsel for respondent/complainant submitted that in view of the provision of section 20 of N.I. Act, such defence is not open. He submitted that what the complainant is required to prove is that the accused has signed the cheque. In the present case the accused is admitting his signature on cheque, but he wants to prove that he has not filled the contents of the cheque. It is his defence in the application that he had kept many blank cheques with him and the brother in law of the complainant somehow took over the cheques and handed over the cheques to the complainant. Admittedly, no complaint is given under section 379 of I.P.C. either to police or in the Court in that regard.

3. The learned counsel for accused placed reliance on the cases reported as **2007 (1) Bom.C.R. (Cri.) 1 [Kalyani Baskar Vs. M.S. Sampooram]** and **AIR 2008 SUPREME COURT 2010 [T. Nagappa Vs. Y.R. Muralidhar]**. He also placed reliance on case of this Court reported as **2011 (0) BCI 182 [Baburao Madhavrao Munnemanik Vs. Vishwajit Pratapsing Pardesh & Anr.]**.

4. This Court has carefully gone through the facts of the reported cases. In the first case, the accused had denied that

the cheque was bearing his signature. In view of this circumstance, it was held that the accused was entitled to prove his defence and the application was moved under section 243 of Cr.P.C. In the second case, the accused had contended that he had signed the cheque in the year 1999 and the cheque was misused in the year 2006 and there were other defences. He wanted to send the cheque to ascertain the age of the signature and in view of that peculiar circumstances, the Apex Court held that the cheque needs to be sent to hand writing expert. It appears that on the basis of observations made by the Apex Court in the aforesaid two cases, this Court in the third case held that the accused was entitled to send the cheque for any purpose whatsoever to hand writing expert for comparison. With due respect, it needs to be mentioned here that section 20 of N.I. Act is not mentioned by this Court. Section 20 is very much relevant when there is defence of such nature.

5. Section 20 of N.I. Act shows that it is only required to be proved that the accused has signed the cheque. It provides that when accused hands over inchoate cheque, instrument, it needs to be presumed that authority is given to the person receiving cheque to fill the contents of the cheque. Thus, no defence that the contents of the cheque were not filled by the

accused is available in view of the section 20 of the N.I. Act. When such defence is not available to accused, there is no question of using section 243 of Cr.P.C. Section 243 can be used only in respect of relevant things and not in respect of things which are prohibited by law. This Court sees no reason to interfere in the order.

6. In the result, the petition is rejected.

[T.V. NALAWADE, J.]

SSC/