

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Writ Petition No. 1153 Of 2014.

JAYSING S/O RAMSING MANDVE
VERSUS
THE STATE Of MAHARASHTRA AND ANOTHER.

Gautam s/o Baburao Alhat : Resp.No.1 / Ori.Complainant.

Appearance =>

Mr. Mahesh Sonawane, Advocate for the Petitioner.

Mr. S.A. Ambad, Addl. Public Prosecutor for the State of Maha.

Mr. Swapnil Patil, Advocate for Respondent No.2.

CORAM : V.M. DESHPANDE, J.

DATE : 9th JANUARY, 2015.

Per Court :-

Rule. Rule made returnable forthwith. Heard finally with the consent of both the parties.

[2] Presnet Writ Petition is filed by Jaysingh Ramsing Mandve, who is the accused in S.C.C.No. 7706 Of 2013 filed by Gautam Baburao Alhat [Resp.No.2.] under Section 138 of the Negotiable Instruments Act, 1881.

[3] The Complainant has adduced his evidence. Thereafter, on 20th August, 2014, the petitioner has filed an application requesting to send the disputed cheque to the Handwriting Expert. Said application Exhibit – 33 is

on record of the court below. The learned Judicial Magistrate, First Class, Court No.19th, Aurangabad rejected said application on 2nd September, 2014.

[4] The learned counsel for the petitioner/accused submitted that the learned court below committed mistake in not allowing the application and not sending the disputed cheque to the Handwriting Expert. In order to buttress his point, he relied upon the decision of this court in case of Shashindra Mahaling Naik V/s. State of Maharashtra & Ors., 2011(12) LJSOFT 240.

[5] Perusal the impugned order. Memo of the bank under which the disputed cheque was returned shows that the cheque was returned for insufficient funds in the account of the petitioner/accused. The case of the petitioner for sending the disputed cheque is in respect of reasons for overwriting. Cheque was not dishonoured by the Banker of the petitioner for overwriting; it was not honoured by his Banker since the petitioner/accused did not maintain sufficient funds his bank account to honour the negotiable instrument, which he has issued in favour of the complainant. Further the Judgment cited supra is not helpful to the present petitioner because the fact of said case shows that, it was one of the defence in that case that cheque was issued by way of security and it was blank. Such is not defence raised by the present petitioner. Further when the cheque is not dishonoured by the Banker for the reasons of overwriting, there is no necessity to send the cheque to the Handwriting Expert. In that view of the matter, Petition fails and it is dismissed. Rule discharged.

(V.M. DESHPANDE, J.)