

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No. 6926 of 2014

Ramdas S/o Patilbua Latpate. **.. Applicant.**

Versus

The State of Maharashtra
And Another. **.. Respondents.**

Shri. S.S. Thombre, Advocate, for applicant.

Shri. U.H. Bhogle, Additional Public Prosecutor, for
respondent No.1.

Shri. V.M. Chate, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 7th JULY 2015

ORDER:

1) The application is filed to challenge the order made by the learned Judicial Magistrate, First Class, Ashti on Exhibit 100 from S.C.C. No.431/2010 and also the judgment and order of Criminal Revision No.82/2014 which was pending before the learned Additional Sessions Judge, Beed. The application (Exhibit 100) was filed by present applicant, accused from the case filed by

respondent No.2 under section 138 of the Negotiable Instruments Act, for sending the disputed cheque to handwriting expert for comparison of contents of the cheque (excluding signature). Both the sides are heard.

2) This Court has perused the contents of the application made by the accused and the order made by the learned Judicial Magistrate. The evidence of the complainant is over and the statement of the accused is recoded under section 313 of the Code of Criminal Procedure. The accused has not stepped in the witness box and at present the matter is kept for arguments and judgment.

3) In the application at Exhibit 100 the accused has contended that he had only signed on the cheque and had handed over the cheque to the complainant in the year 2004. He has contended that during evidence, the complainant has not specifically stated as to who had filled the cheque and so it has become necessary to send the cheque to expert. This cheque was used in the year 2010 and so the accused wants to prove that the

handwriting appearing on the cheque is different from his handwriting and it bears only his signature. The learned Judicial Magistrate referred to section 20 of the Negotiable Instruments Act and has relied on some reported cases of this Court and has held that it is not necessary to send the cheque to the expert to ascertain the age of the ink and for comparison of handwriting.

4) Learned counsel for the accused has placed reliance on one case of **Arun v. Sunil** reported as **2011 (11) LJSOFT 115**. In view of the facts of that case this Court had held that it was necessary to send the cheque for verification. The facts of the said case are altogether different. The accused has not given evidence on oath and he has not produced any record of the bank to show that the cheque book was issued to him by the bank in the year 2004. There is nothing on record as to what defence the accused wants to take.

5) Section 20 of the Act shows that when the accused gives cheque signed by him, he gives the authority to the other side to fill the contents of the

cheque. This position of law cannot be disputed. Learned counsel for the complainant has placed reliance on a case reported as **2012 (4) Bom. C.R. (Cri) 649** (Aurangabad Bench) **(Avinash v. Miyasaheb Gramin Bigarsheti Sahakari Patsanstha Ltd).**

6) The case is of 2010 and it can be said that the accused has played every tactics to see that decision of the case is protracted. In view of the aforesaid position of law, this Court holds that no error is committed by the learned Judicial Magistrate.

7) In the result, the application is dismissed.

Sd/-
(T.V. NALAWADE, J.)

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