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

CRIMINAL WRIT PETITION NO. 2952 OF 2012

Mr. Madhav Gangaram Waikar ... Petitioner

Versus

Mr. Shriram Gangadhar Partani and anr. ... Respondents

Mr. R.N. Sanghavi for the petitioner.

Ms V.S. Mhaispurkar, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JULY 15, 2015**

P.C.

Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. The petitioner is aggrieved by the order passed by the learned Judicial Magistrate First Class, Pune in Criminal Case No. 25557 of 2006 rejecting the application of the petitioner for sending the cheque in question to the Forensic Science Laboratory to examine the age of the ink in which the amount has been written on the cheque and also the signature of the petitioner. The petitioner is facing trial for the offence punishable under section 138 of the Negotiable Instruments Act. His case before the trial court is that the cheque in question was given to respondent no.1 by way of security in the year 1993 when the mortgage deed was executed by the petitioner in respect of his own property in favour of respondent no. 1. Petitioner therefore, wanted to establish that there was no legally

enforceable liability for which the cheque is stated to have been issued by the petitioner.

3. Learned Magistrate took a view that the petitioner was not under an obligation to prove his case beyond reasonable doubt and that he can bring some evidence on record to probabalize his case. In my opinion, before taking recourse to the opinion of expert, it would have been just and proper if the witness from the bank was called to tell the court that the cheque book in question was issued in the year 1993 and the account of the petitioner had been closed in the year 1998. For this purpose, the officer who had opened the account and who were available in the bank at the time of closure of account are not necessary. Any responsible officer of the bank can give evidence on the basis of the record available in the bank.

4. In the result, petition is dismissed with a liberty to the petitioner to move the learned Magistrate for calling witnesses from the bank. At the same time, liberty is also given to the petitioner to move fresh application for opinion of an expert if the purpose of the petitioner is not served by examining the bank officers. Petition stands disposed of.

(JUDGE)