

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

CRIMINAL WRIT PETITION NO.3547 OF 2015

Pradeep Dhanrajmal Ailani

...Petitioner

Versus

Mukesh Murlidhar Nagpal & Anr.

...Respondents

.....

Mr. S.A. Malkani for the Petitioner.

Mr. S.H. Joshi for Respondent No.1.

Mr. J.H. Ramugade, APP for Respondent No.2- State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 14th SEPTEMBER, 2015.

P. C. :

The Petitioner herein is an accused in Criminal Case No.1740 of 2013 pending on the file of Judicial Magistrate, First Class, Ulhasnagar, for an offence under section 138 of the Negotiable Instruments Act. By application dated 7th May, 2015 the Petitioner -accused had prayed for sending the cheques and promissory notes to the handwriting expert to ascertain the writing on the said documents. The said application came to be dismissed vide order dated 11th June, 2015. The revision application filed against the said order being Criminal Revision No.88 of 2015 was dismissed by Additional Sessions

Judge, Kalyan by judgment and order dated 31st August, 2015. Aggrieved by the said order the Petitioner-accused filed this petition.

2. Heard the learned counsel for the Petitioner. He submits that the Petitioner-accused has raised the defence that the handwriting on the cheque is not that of the Petitioner-accused. He has further submitted that it is necessary to refer these cheques to the handwriting expert in order to ascertain the handwriting on the cheque. He has further submitted that the learned Magistrate has not arrived at any finding that the Petitioner-accused was trying to delay the proceedings. He has further submitted that finding of the Magistrate that the Petitioner-accused was trying to verify the age of the signature thereon, is totally erroneous with the provisions under section 20 of the Negotiable Instruments Act are not applicable as it is not the case of the Respondent- complainant that the accused had given a blank cheque. He has submitted that the accused has every opportunity to adduce the evidence and he cannot be deprived of the this opportunity on the ground of delay.

3. The learned counsel for the Respondent No.1 has submitted that evidence of the complainant was completed on 16.1.2014. Subsequently, statement of the Petitioner-accused came to be recorded

and he also examined the witness. Thereafter the application was filed at the fag end of the trial with the intention of protracting the trial. He has also submitted that the Petitioner has not disputed his signature on the cheque and that in terms of section 20 it is immaterial that the contents therein are not in the handwriting of accused. He relied upon the judgment of this Court in **Simratmal s/o. Hiralal Gandhi V/s. Kedarnath s/o. Badrinarayan Bang & Ors. 2011 ALL MR (Cri) 3505.**

4. I have perused the records placed before me and also considered submissions advanced by the respective counsel. It is pertinent to note that that the learned Magistrate has dismissed the application relying upon section 20 of the Negotiable Instruments Act as well as the order of this Court in **Simratmal Hiralal Gandhi V/s. Kedarnath Badrinarayan Bang & Ors. 2011 ALL MR (CRI) 3505.** The Sessions Judge has also dismissed the revision in view of the provisions of section 20 of the Negotiable Instruments Act, which reads as under :

Section 20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to

make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

5. Section 20 of the Negotiable Instruments Act creates a right in favour of the holder of the cheque inter alia, to complete an incomplete negotiable instrument. The rider of this section is that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid therein.

6. In the instant case, the complainant had claimed that he had given to the accused a friendly loan of Rs.1,50,000/- for the purpose of his business and as a collateral security, the accused had executed two promissory notes. The complainant has averred that the accused had issued the two cheques towards repayment of the said loan. Whereas the defence of the accused as can be seen from the tenor of cross examination is that he had given the disputed cheque to

one Ajay Kumar and that the complainant has misused the same by writing his name. In the light of this defence, the provisions of section 20 of the Negotiable Instruments Act were not attracted.

7. It is true that section 243 of the Cr.P.C. creates a valuable right in favour of the accused to examine defence witness. Nonetheless such right cannot be exercised with a view to delay the proceedings. In the instant case, the records reveal that the criminal complaint is of the year 2013. Evidence of the complainant was recorded on 16.1.2014. The statement under section 313 of Cr.P.C. of the Petitioner-accused was also recorded on 10.2.2014 and thereafter the Petitioner-accused has also examined witness in defence. The application for referring the cheque and the promissory note to the hand writing expert has been filed more than a year after the evidence of the complainant was completed. These facts demonstrate that conduct of the Petitioner-accused appears to only to protract the litigation.

8. In the circumstances, and for the aforesaid reasons the impugned order does not warrant interference.

9. The writ petition is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)