

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (apl) No. 95 OF 2014

Vishwas Krushi Kendra, Shemba,
through its Proprietor
Shri Vishwas Ramdas Narkhode,
aged about 46 years, Occupation : Business,
r/o Post Shemba, Tahsil Motala,
Distt. Buldana

.... **APPLICANT.**

VERSUS

The Vidarbha Cooperative Marketing Society,
Nagpur, Branch Malkapur,
through its Manager,
Shri Prakash Vishwanath Paraskar,
Occ.: Service,
r/o Buldana Road, Malkapur,
Distt. Buldana.

... **NON-APPLICANT.**

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Mr. A.A. Naik Advocate for the Applicant.
Mr. T.V. Tathod Advocate for the Non-applicant.

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CORAM : S.B. SHUKRE, J.
DATED : 12.01. 2015.

ORAL JUDGMENT :

Heard. Admit. . Heard finally by consent.

2. Considering the specific defence taken by the applicant
and also his denial of sending of letter containing alleged admission on

his part vide Ex.49, I am of the view that the application filed by the applicant praying for sending of the cheque vide Ex.41 and the document vide Ex.49 for examination by Handwriting expert, ought to have been allowed by the trial Court. Dismissal of this application has resulted in denial of fair trial as held by the Hon'ble Apex Court in the case of **Kalyani Baskar (Mrs.) v. M.S. Sampornam (Mrs.)** reported in **(2007) 2 SCC 258** and **T. Nagappa v. Y.R. Murlidhar** reported in **2008 ALL MR (Cri) 1945 (SC)**.

3. Right to adduce evidence including that of report of Handwriting expert is a valuable right and if such right is denied, it would lead to denial of fair opportunity to the accused to defend himself and ultimately he would be deprived of fair trial in the case.

4. The applicant/ accused in this case had given suggestions in the cross-examination of witness of the complainant that there were business transactions between him and the complainant and as a part of those business transactions, there was a practice of keeping signed blank cheque leaves with the complainant as a security for the purchases that were being made from time to time by the accused from the complainant. The applicant has also denied sending of any letter by him vide Ex.49 as can be seen from his answer to Q.No. 9 in his statement recorded under Section 313 of Code of Criminal Procedure. The defence so specifically taken by the applicant would have to be allowed to be supported or probabalised by the evidence of Handwriting expert and his

report as a proof of valuable right of accused to a fair trial. The impugned order which stifles such an important right of the accused cannot be sustained in law and it deserves to be quashed and set aside.

5. In the result, impugned order is quashed and set aside and the order dated 8.1.2014 passed below Ex.57 is quashed and set aside. The application (Ex.57) is allowed. The disputed documents be sent to Handwriting expert and his report be called for, who may give his report as expeditiously as possible. After receipt of the report, the trial of the case be expedited and the case be disposed of in accordance with law, as far as possible within a period of three months from the date of receipt of the report.

JUDGE

/TA/