

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

Criminal Writ Petition No. 261 of 2016

District : Aurangabad

Amar s/o. Suresh Deshmukh,
Age : 31 years,
Occupation : Business,
R/o. Nagonyachiwadi,
Post : Golatgaon,
Taluka & District : Aurangabad.

.. Petitioner
(Original accused)

versus

Subhash s/o. Sampatrao Shinde,
Age : 44 years,
Occupation : Doctor,
R/o. "Sneh", Plot No.1,
Sector-4, N-7, Cidco Post Office,
Aurangabad.

.. Respondent
(Original complainant)

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Mr. D.B. Pawar, Advocate, for the petitioner.

Mr. N.D. Sonawane, Advocate, for the respondent.

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CORAM : N.W. SAMBRE, J.

DATE : 15TH MARCH 2016

COURT'S ORDER :

1. This petition is by accused in Summary Criminal Case No. 2868/2014, pending on the file of Judicial Magistrate (F.C.), Aurangabad,

questioning the order dated 2nd June 2015, passed by the Judicial Magistrate (F.C.), 11th Court, Aurangabad, below Exhibit 49, whereby an application preferred by the petitioner - accused for referring certain part of the cheque for opinion of the handwriting expert came to be rejected. The revision at the behest of the petitioner, being Criminal Revision No. 151/2015, against the order of rejection of prayer for referring the matter to handwriting expert, also came to be dismissed by order dated 4th February 2016, passed by the Addl. Sessions Judge-2, Aurangabad. As such, the present petition.

2. Mr. Pawar, the learned Counsel for the petitioner would submit that if the disputed part which is written on the back side of the cheque is perused, the same speaks of satisfaction of the liability that was sought to be fastened on the petitioner in the proceedings initiated under Section 138 of the Negotiable Instruments Act 1881. According to him, the application Exhibit 49 for calling report of the handwriting expert was moved at an appropriate stage i.e. after statement of the accused is recorded under Section 313 of the Code of Criminal Procedure 1973. He would submit that for satisfying complete opportunity to the accused, particularly in the background of the entitlement of fair trial, the application Exhibit 49 ought to have been granted by the Court below. He would then invite attention of this Court to the reasons recorded by the learned Sessions Court while dealing with the revision and submit that those are not germane to the cause. According to him, the petition is liable to be allowed.

3. Mr. Sonawane, the learned Counsel for the respondent -

original complainant, would submit that the case that is sought to be put forth by the petitioner - accused is introduced for the first time by the accused by moving the application Exhibit 49 for referring the matter to the handwriting expert wherein he has come out with a case of '*Paid in cash*'. He would submit that the application is moved at the stage of final hearing for which the complaint is fixed, so as to protract the trial. According to him, the overall approach of the petitioner, particularly in the background of the evidence that is brought on record, nowhere it is brought that the amount was already paid by the petitioner - accused to the respondent - complainant.

4. In the above referred background, having bestowed my thoughts to the submissions made, it is required to be noted that the learned Magistrate has considered the evidence of witness Mr. Amit Deshpande in the light of the cheque at Exhibit 14 which reflects concerned disputed writing '*received, paid cash*'. The learned Magistrate then considered the defence of the present petitioner and also statement made under Section 313 of the Code of Criminal Procedure 1973 and has rejected the application.

5. The learned Addl. Sessions Judge, having regard to the law laid down by the Hon'ble Apex Court in the case of ***T. Nagappa Vs. Y.R. Muralidhar***, reported in ***AIR 2008 SC 2010***, noted that the said issue as regards payment of the amount under cheque would be gone and appreciated at the stage of final hearing of the matter. The learned Addl. Sessions Judge in more detail has gone into entire controversy of the parties and has noted that the overwriting on the cheque, in view of the

evidence of witness Mr. Amit Deshpande, would be inferred to be after initiation of the proceedings. In my opinion, having regard to the stand / defence raised by the present petitioner in the summary trial case, the application as is moved is rightly rejected by the learned Courts below upon considering the entire material that is brought on record. Both the Courts below, particularly the learned Addl. Sessions Judge has given sufficient reasons having regard to the controversy raised. No case for interference in exercise of extraordinary jurisdiction is made out.

6. In the result, the Petition fails and the same is dismissed.

(N.W. SAMBRE)
JUDGE

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