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

CRIMINAL WRIT PETITION NO.628 OF 2016

M/s Shubham Super Shopee,
Proprietor Jitendra Subhashchandra Pande,
Age: 41 years, Occu: Business,
R/o. N-9, H-Sector, Hudco,
Aurangabad

..PETITIONER

VERSUS

1. Ajay Nimbadas Khairnar,
Age: 41 years, Occu: Business,
R/o. N-11, B-87/4,
Subhashchandra Bose Nagar,
Hudco, Aurangabad

2. The State of Maharashtra,
Through Investigation Officer,
Cidco Police Station,
Aurangabad

..RESPONDENTS

Mr R. V. Gore, Advocate for petitioner;
Mr Janephalkar, Advocate for respondent No. 1;
Mr N. T. Bhagat, Addl. Public Prosecutor for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 29th September, 2016

ORAL ORDER :

Respondent no.1 – accused is facing trial in S.C.C. No.531 of 2012 before 14th Judicial Magistrate First Class, Aurangabad, for offence punishable under section 138 of the Negotiable Instruments Act, which is described to be the second round of litigation. It is informed that the the first round of litigation had resulted into settlement and since same was not honoured, present criminal complaint came to be filed.

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2. In the aforesaid trial, application Exh.75 came to be moved by the applicant - complainant praying therein that the documents Exhs.44, 45 and 62 be sent for opinion of the Handwriting Expert, as document Exh.44 notices certain insertions.

3. The aforesaid application came to be rejected by learned Magistrate, by an order dated 13th April, 2016, on the ground that respondent no.1 accused has objected the said prayer and trial is at an advanced stage.

4. Mr Gore, learned Counsel appearing on behalf of the applicant, would submit that the evidence of Handwriting Expert is necessary as the documents, which are sought to be relied upon, are required to be considered while deciding the claim of the rival parties on merits. He would then submit that it is the evidence of the accused, which prompted the applicant to move such an application and it is necessary in the interest of justice to give fair opportunity to both sides and as such, application Exh.75 ought to have been granted.

5. Per contra, Mr Janephalkar, learned Counsel appearing on behalf of respondent no.1 – accused submits that the earlier settlement was with the wife of accused and not with respondent no.1 – accused. He would submit that there was certain iota of evidence, which speaks of the present applicant – complainant not to enforce the liability against the cheque in

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question. He submits that the application is moved with an intention to prolong the trial.

6. Having bestowed my thoughts to the submissions made, though there is a presumption against respondent no.1 – accused, particularly under section 118 and 139 of the Negotiable Instruments Act, it is required to be noted that the applicant is required to prove his case and such presumption is rebuttable.

7. The principle of criminal trial contemplates that not only the accused but also the complainant is entitled for fair opportunity of hearing.

8. In the above background, in my opinion, the Trial Court has committed an error by rejecting application Exh.75. Thus, the writ petition succeeds. I, therefore, pass following order :-

The order dated 13th April, 2016, passed by 14th Judicial Magistrate First Class, Aurangabad, below Exh.75, in S.C.C. No.531 of 2012, is hereby quashed and set aside.

Application Exh.75 stands allowed.

Pursuant to the joint request made by the parties, hearing of the matter is expedited.

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Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

amj