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

CRIMINAL WRIT PETITION NO.708 OF 2015

Pradeep Vishwanath Waghmare,
Age 51 years, Occu. Labourer,
R/o A/p Behind Kohinoor Mangal
Karyalaya, Gulmohar Road,
Savedi, Ahmednagar,
Tq. & Dist. Ahmednagar

..PETITIONER

VERSUS

1. The State of Maharashtra,
2. Kanhoor Pathar Co-operative
Credit Society Ltd.,
Through Shri Rashid Gulab
Inamdar,
Age : 50 years, Occu. Service,
R/o C/o Kanhoor Pathar Co-op.
Credit Society Ltd., Tq. Parner,
Dist. Ahmednagar

..RESPONDENTS

Mr Y.P. Deshmukh, Advocate for petitioner;
Mr D.V. Tele, Addl. Public Prosecutor for respondent no.1;
Mr S.V. Suryawanshi, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 11th March, 2016

ORAL ORDER :

An application Exh.117 came to be moved in S.T.C. No.454 of 2004 by the petitioner - accused, claiming that the documents Exhs.67, 68 and 69 are not signed by him and has accordingly come out with such defence in statement recorded under section 313 of the Code of Criminal Procedure. He, therefore, prayed that the said documents be referred for

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opinion to the Handwriting Expert, so as to ascertain denial of signatures claimed by him with those on admitted documents such as, vakilpatra, acknowledgment of the registered letter.

2. The said application Exh.117 came to be rejected by Judicial Magistrate First Class, Parner, by an order dated 7th April, 2015. Thus, the present petition.

3. Though learned Counsel appearing on behalf of the petitioner tried to make out a case for grant of application Exh.117, for referring Exhs.67, 68 and 69 (learned Counsel appearing on behalf of respondent no.2 has not disputed that it is wrongly typed as Exh.73, instead of Exh.69), to the Handwriting Expert, it is required to be noted that on an earlier occasion, similar application had been moved by the petitioner, which came to be rejected by the learned Magistrate and said order was confirmed in Criminal Writ Petition No.302 of 2014, with an observation that the said application was moved at premature stage as it was before recording his defence under section 313 of the Code of Criminal Procedure and before giving any evidence in defence thereof he had come out with such a plea. This Court then granted liberty to the present petitioner to come out with similar prayer after recording of his statement under section 313. As such, the petitioner had moved application Exh.117, afresh.

4. According to the learned Counsel appearing on behalf of the petitioner, the reasons recorded for rejection of application Exh.117 are

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not germane to the cause. He would submit that the reasons furnished by the learned Magistrate are that, the case is quite old and the documents signature whereon are denied are in relation to the loan transaction, which was about 9 to 10- years old. The learned Magistrate then noted that the petitioner – accused has not denied the entries in the receipt and cash book, as also entries in the extract of account. He would then submit that so far as the above entries are concerned, those are by respondent no.2 – complainant, presuming that the petitioner had availed loan facility, whereas the defence of the petitioner is that of denial of disbursement of the loan, though it was sanctioned.

5. Learned Counsel appearing on behalf of respondent no.2 – complainant would submit that the present attempt on the part of the petitioner is nothing but protraction of litigation. He submits that the prosecution under section 138 of the Negotiable Instruments Act was initiated in 2004 and is pending since last about twelve years. He would submit that the plea now sought to be raised is an afterthought and with *mala fide* intention and sought rejection of the petition.

6. Having bestowed my thought upon the submissions advanced, it is required to be noted that this Court, in earlier Criminal Writ Petition No.302 of 2014 while dealing with the similar issue arising out of the same proceedings, has observed that the powers of the Court to verify the signature by naked eye and the Expert's knowledge pursuant to the provisions of sections 47 and 73 of the Evidence Act are to be taken

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recourse to sparingly. In this background, it is noted that since beginning it was the case of the petitioner – accused that his signatures on the vouchers which are produced, so as to demonstrate disbursement of loan in his favour, were denied by him. The said case as was set out by him is consistent throughout the trial and even in the statement recorded under section 313 of the Code of Criminal Procedure. The petitioner – accused as such has come out with the same defence.

7. Having regard to the fact that since beginning there is consistency in the stand of the present petitioner as regards denial of his signatures on the loan disbursement vouchers, the same ought to have been considered by the learned Magistrate in favour of the petitioner. The claim that the petitioner is trying to protract the litigation, in view of above observations, will hardly be of any consequence.

8. Learned Counsel appearing on behalf of the petitioner has, in fact, made out a case for referring Exhs.67, 68 and 69 to the Handwriting Expert for verification of the signatures of the petitioner, based on his admitted signatures on vakilpatra and postal acknowledgment of registered letter, which are already part of the record of the Court.

9. In view thereof, the petition succeeds. I, therefore, pass following order :-

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The order dated 7th April, 2015, passed by Judicial Magistrate First Class, Parner, below Exh.117, in S.T.C. No.454 of 2004, is hereby quashed and set aside.

Application Exh.117 stands allowed. Appropriate steps for referring Exhs.67, 68 and 69 to the Handwriting Expert be taken expeditiously.

Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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