

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1541 OF 2015

Bandeppa S/o Mallikarjun Kante,
Age : 44 years, Occu. Business & Agri.,
R/o Deoni, Tq. Deoni, Dist. Latur

**.. Petitioner
(Orig. Complainant)**

Vs.

1] Madhav S/o Narayanrao Birajdar,
Age : 67 years, Occu.: Agri.,
R/o Near B.R. Gattate, New Jewellers
New Mondha, Shetki Niwas, Udgir,
Tq. Udgir, Dist. Latur **..[Orig. Accused]**

2] The State of Maharashtra

.. Respondents

Ms. Supriya L. Pansambal, Advocate h/f Mr. V.D. Gunale,
Advocate for the petitioner
Mr. R.D. Biradar, Advocate for respondent no.1
Mr. A.R. Kale, APP for the respondent/State

**CORAM : V.K. JADHAV, J.
DATE : 14/10/2016**

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with the consent of parties at admission stage.

2. Being aggrieved by the judgment and order passed by the Additional Sessions Judge, Udgir dated 25.11.2015 in Criminal Revision Application No.17/2015, the original complainant has preferred this writ petition.

3. Brief facts, giving rise to the present writ petition are as follows :-

a] The petitioner is the original complainant in S.C.C No.147/2013 before the Judicial Magistrate First Class, Deoni. The petitioner has filed said complaint against respondent no.1 for having committed an offence punishable u/s 138 of the Negotiable instruments Act. After evidence of the petitioner-complainant is closed and after the statement of respondent no.1-accused under 313 of the Code of Criminal Procedure was recorded, respondent no.1-accused filed an application Exh.33 in the said S.C.C. No. 147 of 2013 for referring the said cheque for the opinion of hand writing expert and forensic lab for the determination of the age of signature and hand writing on the cheque.

b] The said application was strongly resisted by the petitioner-original complainant by filing his say at Exh.37. The learned Magistrate by order dated 11.9.2015 below exh.33 rejected the said application with costs of Rs.500/-.

c] Being aggrieved by the same, respondent no.1-

original accused has preferred Criminal Revision Application No.17/2015 and the learned Additional Sessions Judge, Udgir by his impugned order dated 25.11.2015 in the aforesaid revision allowed the revision and thereby quashed and set aside the order passed by the Judicial Magistrate First Class, Deoni below exh.33 and thus allowed the application Exh.33. Hence, this writ petition.

4. The learned counsel for the petitioner-original complainant submits that, respondent no.1-accused had filed said application exh.33 only with an intention to protract the trial. Learned counsel submits that accused has not denied his signature on the cheque exh.15. The respondent no.1-accused has raised defence that he has issued said cheque as a security and handed over the same to one Shivkumar and that petitioner-complainant in collusion with said Shivkumar Sontakke misused the said blank cheque with ulterior motive. Even, the petitioner-complainant during the course of his cross examination has also admitted that there is difference in ink and hand writing of the body of the cheque compared to the signature thereon. Learned counsel submits that, in view of the same, expert's

opinion in respect of hand writing and age of the ink with regard to the contents of the cheque and signature thereon becomes totally irrelevant. Learned counsel submits that, the Magistrate, Deoni has rightly rejected the application, however, the learned Additional Sessions Judge, Udgir without applying mind set aside the well reasoned order passed by the Magistrate.

5. Learned counsel for the petitioner submits that in "**Mrs. Kalyani Baskar Vs. Mrs. M.S. Sampornam**" (2007)2 **SCC 258**, the issue was altogether different and the accused in that case has raised the preliminary objection to the effect that he had not signed the cheque nor issued the cheque to the respondent-complainant. Learned counsel for the petitioner submits that in "**T. Nagappa Vs. Y.R. Murlidhar**" 2008 DGLS (SC) **599**, the Supreme Court has merely placed reliance on the ratio laid down in **Mrs. Kalyani's** case (cited supra). Thus, **T. Nagappa's** case referred supra cannot be made applicable to the facts and circumstances of the present case.

6. Learned counsel for the petitioner in order to substantiate her contention, placed reliance on the judgment dated 3rd March, 2015 of this Court of Nagpur

Bench in Criminal Writ Petition No. 1010 of 2014 (**Brijratan S/o Govinddas Mohta Vs. Vidarbha Nagrik Pat Sanstha, Hinganghat**), wherein this Court has observed that the complainant too has a fundamental right to fair trial of the case and even referring **T. Nagappa's** case, held that the petitioner therein has already been given sufficient opportunity to defend himself and now he cannot be permitted to delay the trial.

7. Learned counsel for respondent no.1-original accused submits that, respondent-accused has every right of fair trial and as soon as his statement under 313 of Code of Criminal Procedure was recorded by the Magistrate, respondent no.1-accused had filed an application exh.33 for referring the said cheque to hand writing expert for determination of age of the signature and contents of the cheque. Learned counsel submits that, in the year 2007 respondent no.1 accused had issued a signed blank cheque towards security to one Shivkumar Sontakke, who happened to be a cousin of the wife of petitioner-original complainant. Said signed blank cheque came to be issued as a security for an amount of Rs.10,000/- (Rs. Ten Thousand only). Learned counsel submits that, petitioner-original complainant in

collusion with the said Shivkumar Sontakke misused said blank cheque and filled up figure Rs.15.00 lacs (Rs. Fifteen lacs) and filed a false complaint against respondent no.1-accused. Learned counsel submits that, in the backdrop of these facts, age of the ink used for signature and for contents of the cheque is quite relevant. Learned counsel submits that considering the same, the Additional Sessions Judge, Udgir, has correctly interfered in the order passed by the Magistrate, Deoni and accordingly allowed the application Exh.33 by setting aside the order passed below exh.33.

8. Learned counsel for respondent no.1 in order to substantiate his contentions places his reliance on the following cases :-

1. **T.Nagappa Vs. Y.R. Murlidhar reported in 2008 DGLS (SC) 599.**
2. **Baburao Madhavrao Munnemanik Vs. Vishwajeet Pratapsing Pardesh and another reported in 2011 BCI 182.**
3. **Dada Ghansham Pathak Vs. State of Maharashtra and another reported in 2010 (3) Bom.C.R. (Cri.) 789.**
4. **Nandkumar Rajkumar Harane Vs. Vishwas Vilasrao Kshirsagar and others reported in 2012 (1) Bom.C.R (Cri) 232.**

5. A Nasira Begum Vs. V. Husain Ahmed in Criminal Revision Case No.257 and 312/2015 (Madras High Court).

9. In the instant case, as per the defence of the accused, he had issued only signed blank cheque as security to one Shivkumar Sontakke, who happen to be cousin of the complainant's wife, for an amount of Rs.10,000/- in February, 2007. The respondent-accused further advanced his case that even after repayment of the said amount, even though requested number of times, the said Shivkumar Sontakke avoided to return the cheque. After lapse of 6 years period, the petitioner-complainant, in collusion with the witness and the said Shivkumar Sontakee, with a view to harass the accused and to extract excess money, himself used the said signed blank cheque by changing figure of the cheque to the tune of Rs.15 Lakhs and showing the name of the petitioner/complainant in whose favour the said cheque had been issued. Even the respondent/accused has cross-examined the petitioner-complainant in the line of the defence as aforesaid and even the petitioner-complainant has admitted in his cross-examination that there is

difference of ink on the disputed cheque in respect of the signature and writing on the body of the cheque.

10. In the instant case, after examination of the accused under section 313 of the Code of Criminal Procedure was over, the respondent/accused has filed an application Exhibit 33 for referring the said cheque to the hand-writing expert. Learned Additional Sessions Judge, Udgir has rightly observed that there is no question of protracting the litigation because at the earlier point of time, the respondent/accused moved an application at Exhibit 33.

11. In the case of **"Brijratan S/o Govinddas Mohta Vs. Vidarbha Nagrik Pat Sanstha, Hinganghat"** (referred supra) and relied on by the learned counsel for the petitioner, this Court has observed that the petitioner accused in that case while cross-examining the complainant, did not even suggest that the disputed cheque was issued on certain date for an amount of Rs.25,000/- as a part of the hundi transaction. It was also not suggested in the cross-examination that the complainant manipulated the date and the amount by changing them as 18.10.2008 and amount of Rs.4,25,000/- respectively. In the backdrop of these facts, this

Court has observed that the petitioner in that case now cannot be permitted to come up with a new story and be further allowed to send the disputed cheque to an appropriate forensic laboratory for determination of the age of the ink of handwriting and the signature appearing on the disputed cheque. In the facts of the said case, this Court has also observed that complainant too has fundamental right to fair trial of the case.

. However, in the instant case, the accused has not only suggested the complainant his entire defence but also cross-examined the petitioner-complainant on the grounds raised by him. The petitioner-complainant has admitted in cross-examination that there is a difference of ink on the disputed cheque in respect of his signature and also in respect of the writing on the body of the cheque.

12. In the case of **"T. Nagappa Vs. Y.R. Muralidhar"** (cited supra), relied on by learned counsel for the respondent-original accused, in paragraph no.9 of the judgment, the Supreme Court has made the following observations :-

"9. The learned Trial Judge as also the High

Court rejected the contention of the appellant only having regard to the provisions of Section 20 of the Negotiable Instruments Act. The very fact that by reason thereof, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bona fide.

The issue now almost stands concluded by a decision of this Court in Kalyani Baskar (Mrs.) V. M.S. Sampooram (Mrs.) [(2007) 2 SCC 258] (in which one of us, L.S. Panta, J., was a member) wherein it was held :

"12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good

material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

13. The ratio laid down in the case of "**T. Nagappa's**" case (cited supra) squarely applies to the facts of the present case.

14. Learned counsel for the petitioner submits that no purpose would be served by sending the said cheque to hand-writing expert for determination of the age of the ink etc. as it is not possible for the hand-writing expert to opine about the age of the ink and the age of the signature. However in "**T. Nagappa's**" case

referred supra, the cheque has been directed to be sent to a expert's opinion on the question whether the writing appearing in the said cheque on the front page is written on the same date and time when the said chque was signed as "T. Nagappa" on the front page as well as on the reverse, or in other words, whether the age of the writing on Exhibit P2 on the front page is the same as that of the signature of "T. Nagappa" appearing on the front as well as on the reverse of the Cheque exhibit P-2?

15. In the instant case also, the accused has raised defence that in the year 2007 he had issued blank signed cheque in favour of one Sontakke and even though, the amount was repaid, said Sontakke who happen to be the relative of the petitioner through his wife, refused to return the said blank cheque. It is also the defence of the accused that the petitioner thereafter misused the said blank cheuge by changing the figure and over-writing on the body of the cheque in a different ink and accordingly filed a false complaint. Thus, the respondent-accused cannot be convicted without an opportunity of being heard given to him and if it is denied, there cannot be any fair trial. In view of the

above discussion, I proceed to pass the following order :-

ORDER

I] Criminal Writ Petition is hereby dismissed.

16. Rule stands discharged.

**[V.K. JADHAV]
JUDGE**

arp/