

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1731 OF 2013

Mr. Balasaheb Kondaji Kedar

... Petitioner

vs.

The Nashik Merchants' Co. Op. Bank Ltd.
Nashik and anr.

... Respondents

Mr. S. D. Patil i/by Ms. Deepa Matwankar, Advocate for the petitioner.

Mrs. Vrushali Raje, Advocate for respondent No.1.

Ms. P. B. Bhosale, Additional Public Prosecutor for the State.

Coram : Smt. R. P. SondurBaldota, J.

Date : 23rd February, 2016.

P. C. :

1. This petition challenges the order dated 3rd August, 2011 passed by the trial Court, rejecting the petitioner's application for referring the cheque, in question, to handwriting expert for his opinion. The petitioner is the accused in the proceedings filed under Section 138 of Negotiable Instruments Act. The order of the trial Court has been confirmed by the Sessions Court by it's order dated 1st March, 2013.

2. The present petition was filed on 1st April, 2013. As the petitioner was negligent in attending to the same, by the order

dated 26th August, 2014, it was dismissed for want of prosecution. Thereafter, the petitioner moved Criminal Application No.425 of 2013 for its restoration and by the order dated 6th January, 2014, the same was restored to file. The petition was dismissed for the second time on 2nd July, 2014 and restored for the second time by the order dated 12th February, 2016. Thereafter, notice was issued to respondent No.1 and after service of notice, the same is taken up today, for admission.

3. Complaint under Section 138 of Negotiable Instruments Act was filed by respondent No.1 on 15th January, 2007. The petitioner appeared in the proceedings in October-2007. Within two months thereafter i.e. on 15th December, 2007, the affidavit of examination-in-chief of the complainant was filed. The petitioner had, thereafter, filed Criminal Application No.157 of 2010 in this Court challenging the order of issuance of process. That petition was dismissed on 19th November, 2010 and the trial in the proceedings was expedited. The petitioner was, however, given exemption from personal appearance, to the extent of the statement under Section 313 of Criminal Procedure Code being recorded through his advocate. Respondent No.1 examined three witnesses in support of his case. The statement under Section 313 of Criminal Procedure Code of the petitioner was recorded on 20th

June, 2011. Then the petitioner examined himself in the complaint. His affidavit in examination-in-chief was filed on 29th June, 2011 and his cross-examination completed on 2nd August, 2011. On that day, he moved an application for referring the cheque to the handwriting expert for his opinion, which has been dismissed.

4. Perusal of the record shows that the grievance as regards the handwriting on the cheque was not made at the earliest opportunity as has been noted by both the Courts below. Further, the application was made at the far end of the proceedings. In the circumstances, the finding of the Courts below that the application has been filed only with intent to further delay the proceedings, is justified. The intention can also be gathered from the manner in which the present petition has been prosecuted by the petitioner. As already mentioned above, after its filing, the same was left unattended for eight months and as a consequence, it was dismissed for default. Four months thereafter it came to be restored to file only to be dismissed again on 2nd July, 2014. It was restored for the second time by the order dated 12th February, 2016. In the circumstances, it is obvious that the application filed by the petitioner has been with intention to delay the proceedings. Besides the report of handwriting expert is not

conclusive and it is always open for the learned Judge while deciding the complaint to express his independent opinion on the handwriting seen on the cheque. Hence, the writ petition is dismissed. In view of the conduct of the petitioner in dragging the proceedings from the year 2007 till 2016 on one pretext or the other, he must be saddled with costs. He shall pay costs quantified at Rs.1,00,000/-. The costs to be paid within a period of four weeks from today to the respondent.

[Smt. R. P. SondurBaldota, J.]