

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

Criminal Writ Petition No. 48 of 2016

[Choithram S/o Ramchandra Poptani Vs. Bhartiya Sindhu Sahkari Pat Sanstha
Maryadit, Akola]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri A. R. Deshpande, Advocate for the petitioner

CORAM : Prasanna B. Varale, J.

DATE : 12-2-2016.

Heard Shri Deshpande, learned counsel for the petitioner.

The petitioner challenges the order passed by the Judicial Magistrate First Class, Akola dated 13-10-2015. The petitioner is accused facing proceedings initiated in the Court of the learned Judicial Magistrate First Class, Akola under Section 138 of the Negotiable Instruments Act. The application was filed at the instance of the present petitioner/accused for forwarding the cheque and resolution of the society to the Handwriting Expert. It was the submission of the petitioner/applicant that it is his defence that alleged cheque was blank and only signed by the accused, but the contents were not filled in by the accused and the cheque was misused by the complainant. The petitioner/accused prayed in the application that alleged cheque and resolution be sent to the Handwriting Expert for verifying the same in the interest of justice.

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The learned Magistrate in his order dated 13-10-2015 observed that matter is fixed for statement of accused under Section 313 of the Code of Criminal Procedure. It is further observed that the learned Magistrate himself can take exercise of verifying the signature as per Section 73 of the I. E. Act and the learned Magistrate was not inclined to allow the application. The order passed by the learned Magistrate clearly shows that the learned Magistrate on his own wanted to assess the signature in view of the provisions of Section 73. It was also not the case that the learned Magistrate closed the doors of the petitioner/accused by observing that at that stage the exercise of verifying the signature can be taken up by the Magistrate himself. The learned Magistrate also observed that the matter was at the stage of recording statement of the petitioner/accused under Section 313 of the Code of Criminal Procedure. The learned counsel for the petitioner submits that the recording was already over. Be that as it may, the present petition in view of the observations of the learned Magistrate is nothing but misconceived attempt and least to say an attempt to prolong the proceedings. The attempt of the petitioner would have been justified, if the Magistrate had rejected the application keeping no option open to the accused and thereby caused prejudice to the petitioner/accused. In the order as referred to above, the learned Magistrate proceeded to undertake the exercise which is permitted by the

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law. Thus, the present petition is filed on misconceived facts and such a petition needs to be rejected at the threshold. The petition is, accordingly, dismissed.

JUDGE

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