

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

CRIMINAL WRIT PETITION NO. 1324 OF 2016

Sk.Fayyaz Haji Sk.Ismail

Age : 21 Yrs., Occ. :

Agril., R/o : Pension Pura,

Hingoli, Tq. & Dist. :

Hingoli.

..... PETITIONER/

[ORI.ACCISED]

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station, Hingoli Town,
Tq. & Dist. Hingoli.

..... RESPONDENT

2. Baban Ganpat Gawali
Age : 66 Yrs., Occ. Agril.,
R/o : Mangalwar Bazar,
Hingoli, Tq. Hingoli,
Dist. : Hingoli.

**..... RESPONDENT/
[ORI.COMPLAINANT]**

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Mrs. S.G.Chincholkar, Advocate for Petitioner.

Mr. K.S.Patil, A.P.P. for R – 1 – State.

Mr. S.S.Gangakhedkar, Advocate for R – 2.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 25/09/2017

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent heard finally.

2. By the present petition, the petitioner has challenged the order dated 14/09/2016 passed by Additional Chief Judicial Magistrate, Hingoli. By the impugned order, the learned Chief Judicial Magistrate, Hingoli has rejected the application moved by the accused to refer certain documents for the opinion of State Examiner of Hand Writing.

3. Heard the learned counsel for the petitioner and respondent No. 2. Perused the impugned order.

4. In nut-shell, it is the contention of the learned counsel for the petitioner that for just decision of the case, it is necessary to refer the cheque in question for the opinion of hand writing expert. It is contended that though the cheque in question bears signature of the accused, but the contents of the cheque are not in the hand writing of accused. The blank cheque with the signature of accused has been mis-used by the

complainant by recording his name and filling in other contents. In order to establish the defence of the accused, the cheque in question deserves to be referred for the opinion of hand writing expert.

5. On the other hand, the learned counsel for respondent No. 2 submits that filing of such application is nothing but an attempt to protract the hearing of the CASE. He submits that the accused has not disputed the signature on the cheque. Once the signature is not disputed, it raises presumption that cheque was issued in discharge of legal liability/debt and it is for the accused to rebut such presumption. He further submits that the application filed is premature. The accused has not cross examined the complainant and court has not called upon the accused to enter upon his defence. He, therefore, urge to dismiss the petition.

6. On due consideration of the submissions advanced, I am of the view that the application filed by the accused is premature. The evidence of the complainant is yet to be concluded. The accused has not cross examined the complainant. The cheque in question including the writing over the cheque is yet to be

confronted confronted to the complainant through cross examination as per defence of accused. The stage to call upon the accused to enter upon his defence is yet to reach in the case. In this view, without going into the merit of the order passed, I am of the opinion that the impugned order be set aside and the accused be granted liberty to file fresh application at appropriate stage. Hence, the following order is passed.

ORDER

[i] The impugned order dated 14/09/2016 is set aside. The petitioner is granted liberty to make application after conclusion of recording of the evidence of complainant and at the stage the Court calls upon the accused to enter upon his defence. In case, such application is made, the trial Court is directed to decide the same on its own merit without influenced by the order dated 14/09/2016.

[ii] The petitioner is permitted to withdraw the amount of Rs. 50,000/- [Rupees Fifty Thousand] deposited in this Court.

[V.L.ACHLIYA, J.]

