

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

WRIT PETITION NO. 1712 OF 2003

Vividhlahari, Prop.
Shri. Dhanyakumar Chandanlal Bora ... Petitioner
vs.

Pravin Manikchand Pagariya (HUF) & anr. ... Respondents

Mr. K. P. Shah i/by Mr. P. B. Shah, Advocate for the petitioner.
Respondent no.1 and Advocate absent.
Mr. S. R. Agarkar, A.P.P. for the State/respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.
Date : 3rd February, 2017

P.C. :

1. On the oral application of Mr. Shah, the learned advocate for the petitioner the petition is restored to the file and taken up for hearing immediately.

2. This petition challenges the order dated 24th April, 2012, by which the revisional Court allowed the petitioner's revision application and set aside the trial Court's order permitting recall of the respondent. By the same order, however, the Sessions Court has directed the trial Court to correct a typographical error in the deposition of the respondent recorded on 21st June, 2002. The challenge in the petition is restricted to the said direction.

3. The respondent has filed proceedings under Section 138 of Negotiable Instruments Act being CC No. 2040 of 1999 pending in the Court at Pune, alleging that the cheque issued by the petitioner bearing No. 417118 dated 12th September, 1999 drawn on Bank of India, Navi Peth branch, in favour of respondent for the sum of Rs.50,000/- had dishonoured when presented for payment. The respondent had then issued statutory notice to the petitioner and on failure to make the payment within the prescribed time filed the complaint. During the course of trial the evidence of respondent no.1 came to be recorded on 21st June, 2002. When the cheque in question had been shown to respondent no.2 during evidence, his further deposition recorded at para 4 reads as under :-

“The cheque is produced on record. Now shown to me. Contents in it are true. Its bear my signature. It is dtd. 12/9/99. It is drawn on bank of India, Navi Peth Branch and the cheque No. is 417118, it is at Exh.28.”

Then, respondent no.1 was cross-examined and evidence of one more witness was recorded. It is only thereafter, that respondent no.1 realised the error at para 4 of the evidence, where the signature on the cheque is stated to be his own signature. Therefore, he filed an application for his own recall on 30th July, 2001. The trial Court after hearing both the sides by it's order passed on the same date allowed the application. Being aggrieved by the order, the petitioner approached the Sessions Court with Criminal Revision Application No. 481 of 2001, which resulted into the impugned order. In its judgment and order, the Sessions Court has considered that the error at para 4 as regards the signature was nothing but a typographical error and therefore there was no need for recall of respondent

no.1 for correcting that error. The Sessions Court held that that typographical error can be corrected by the trial Court at any stage and the necessary directions can be given to the trial Court for the purpose.

4. Mr. Shah, the learned advocate for the petitioner submits that the Sessions Court having allowed the revision application and dismissed the application filed by the respondent could not have directed the trial Court to correct the deposition of respondent no.1. According to him, permission of such correction would take away the admission in evidence, which would be in favour of the petitioner.

5. In my opinion, the Sessions Court has correctly treated the error at para 4 of the deposition of respondent no.1 as a typographical error. The complaint of the respondent no.1 specifically states that the cheque in question had been issued by the petitioner drawn on his own account and signed by him. The petitioner has not disputed this fact either in the reply to the statutory notice or in cross-examination of the complainant himself. Thus, the signature is in fact not disputed by the petitioner. Besides, the statement that the cheque is signed by himself by respondent no.1 is by no means an admission in favour of the petitioner. Hence, there is no infirmity in the impugned order and the same does not require any interference by this Court. The petition is dismissed.

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