

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1857 OF 2015

Rajendrasinha Sopanrao Suryavanshi

.....Petitioner

V/s.

The Rukmini Sahakari Bank Ltd and Ors.

....Respondents

Mr. S. S. Aradhye Advocate for Petitioner.

Mr. Ujwal R. Agandsurve for Respondent no. 1

Ms. A. T. Jhaveri APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 4th April, 2017.

PC :

- 1) Heard.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) The Petitioner herein is being prosecuted for offence punishable under section 138 of Negotiable Instruments Act in S.T.C. No. 1482 of 2012.
- 4) By this petition, the Petitioner questions the correctness and validity of the order dated 21/02/2015 passed by 7th Judicial Magistrate First Class, Pandharpur. It is a matter of record that the complainant had filed affidavit in evidence. The complainant was subjected to cross-examination and thereafter the accused had filed an application below Exhibit 62 contending therein that

the Applicant had kept the disputed cheque by way of a security with the complainant bank. It was contended that it was a blank cheque and that the accused had not only not filled in the contents of the cheque but had also not signed the said cheque. It was further contended that in view of the said contention, the disputed cheque be sent to the hand writing expert in the interest of justice. The learned Magistrate had considered the said application on its own merits and had specifically observed that the signature on the cheque is in black ink whereas the contents are filled in in blue ink. The learned Magistrate had exercised powers under Section 73 of the India Evidence Act and had arrived at a conclusion that the contents of the cheque and the signature of the cheque were in all probabilities made by two different individuals. However, it was the specific contention of the accused that the accused had not even signed the said cheque.

5) In view of this, the learned Magistrate did not find it necessary to refer the disputed cheque to the hand writing expert. It is a matter of record that the accused had not replied the statutory notice at the threshold and had not contended that the disputed cheque was kept as a security, more particularly that it was an unsigned cheque.

6) The learned counsel for the Petitioner submits that application seeking the relief of sending the cheque to the hand writing expert was not properly worded and therefore, the learned Magistrate was of the opinion that no specific contentions are raised.

7) Be that as it may, as on today, the substantive evidence has been recorded and statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 is already recorded and therefore, it would not be proper to interfere with the order which was passed more than one year ago. The learned counsel for the Petitioner does not have a copy of the statement of the accused recorded under section 313 of the Code of Criminal Procedure, 1973. The accused would be at liberty to rebut the presumption at the stage of recording of his statement under Section 313 of the Code of Criminal Procedure, 1973 also.

8) Hence, the petition being sans merits deserves to be dismissed. However the observations of the learned Magistrate that the recitals of the disputed cheque and the signature on the disputed cheque may not have been written by the same person would go to the root of the matter and therefore, the learned Magistrate has to determine the issues in the complaint on the

basis of the said observation without being influenced by the dismissal of this petition. It is made clear that the petition is being dismissed mainly on the count of the fact that the matter has proceeded further and the recording of the substantive evidence has been concluded. Petitioner would be at liberty to raise all necessary contentions at this stage.

9) Writ petition stands dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)