

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2845 OF 2015

Shri Arjun Bhimrao Shelke	...	Petitioner
Vs.		
Manganga Sahakari Sakhar Karkhana		
&Ors.	...	Respondents

Mr.Sarang Satish Aradhye,Advocate for the petitioner
Mr. V.V.Gangurde,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 17th April, 2017.

P.C.

Heard. Rule. Rue made returnable forthwith with the consent of the parties.

2. The petitioner herein happens to be an accused in STC/SCC Application No.97 of 2012 pending before the Judicial Magistrate, First Class, Atpadi. The petitioner was a contractor and had entered into an agreement with respondent No.1 which is Manganga Saghakari Sakhar Karkhana situated at Atpadi. The petitioner was to supply labour for crushing season. According to the learned counsel for the petitioner, since the labours engaged by him had not co-operated, he could not abide by the contract. He had taken advance for engaging the labour. Since he could not abide by the agreement, respondent had asked for refund of the

advance. He had issued cheques towards the said liability.

3. The learned counsel for the petitioner fairly submits that it is admitted that the cheque is signed by the petitioner. It is vehemently argued that the cheques were given towards security and that respondent No.1 had filled in the contents of the cheque arbitrarily and therefore, had caused prejudice to the petitioner. The petitioner in the given circumstances had filed an application below Exhibit 30, praying for sending the said cheques to the handwriting expert for analysis and verification. The complainant had denied the suggestion that the contents of of the said cheques were not filled in by the accused and, therefore, the petitioner was constrained to file the said application seeking the relief of sending it to the handwriting expert. He had specifically denied filling in the contents of the cheques.

4. It is pertinent to note that at that stage, the learned Magistrate had observed that the petitioner/accused could rebut the presumption by adducing defence evidence and therefore the learned Magistrate by an order dated 13.2.2013 had rejected the said application.

5. The petitioner had not challenged the order dated 13.2.2013 and therefore it had attained finality.

6. That after the statement of the accused was recorded under Section 313 of Cr.P.C., the petitioner had once again filed an application for

sending the cheque to the handwriting expert. The learned Magistrate had rightly observed in the facts of the case that in the examination under Section 313 of Cr.P.C., the accused had not denied that the disputed cheque was not in his handwriting. The accused has also not denied the contents and signature on the disputed cheque and hence the learned Magistrate had rejected the said application. In the facts of the given case, the order passed by the learned Judicial Magistrate, First Class, Atpadi calls for no interference. The accused/petitioner would be at liberty to urge all the issues in the course of the arguments at the stage of final hearing. Since the order dated 15.2.2013 had attained finality, and that the contents of the cheque were not denied at the stage of Section 313 of Cr.P.C. this Court is not inclined to set aside the order passed by the learned Magistrate by order dated 9.2.2015.

7. The Petition stands dismissed with the above observations. However, it is made clear that all contentions are kept open and can be considered at the stage of final hearing. Rule is accordingly discharged.

(SMT. SADHANA S.JADHAV, J.)