

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4056 OF 2016

Mr. Sahebrao Vasantrya Bhosale Petitioner

Versus

Mr. Ganesh Bhimrao Ghule & Anr. Respondents

AND

CRIMINAL WRIT PETITION NO. 4059 OF 2016

Mr. Sahebrao Vasantrya Bhosale Petitioner

Versus

Mr. Amit Arjun Ghule & Anr. Respondents

Mr. Pavan Patil i/by. Triyama Legal for Petitioner (in both Petitions).

Mr. P.D.Patil for Respondent No.1. (in both Petitions).

Ms. Pallavi Dabholkar, APP for Respondent No.2/State (in both Petitions).

CORAM : RAVINDRA V. GHUGE, J.

DATE : MARCH 15, 2017.

P.C.

. The Petitioner in both these Petitions is aggrieved by the orders dated 4/11/2015 passed by the trial court in Summary Criminal Case No. 19869 of 2013 and 19870 of 2013, by which his prayer to refer the cheque at issue to the Forensic Department for testing the age of the ink and the handwriting on the cheque, has been rejected.

2. By the impugned order dated 4/11/2015, the learned trial court has rejected the application on the ground that once the cheque has been signed by the person holding the account, it is insignificant as to whether the details were filled in by him or by somebody else.

3. The Petitioner has taken a stand before the trial court that as the Petitioner and the original complainants were friends, which is not disputed, he had issued cheques after signing them. The said cheques were blank. The Petitioner is an illiterate person and cannot read or write in English language. The details mentioned in the cheque are in English which have not been written by the Petitioner.

4. It is also his case that he had issued the cheques only by way of security. Since the original complainants did not give him any handloan and since he did not receive any money from them, he requested them to return his two cheques. They had stated that the cheques were lost. As the Petitioner had not received the amount as promised and as the cheques were lost according to the complainants, he had presumed that the issue is closed. It is only after the original complainants presented the cheques for realization and were dishonoured, that the Petitioner has realized that he was tricked.

5. The learned Counsel for Respondent/Original Complainants submits that after the cheques were deposited with

the Bank and on being dishonoured on account of “Insufficient Funds”, a notice was issued to the Petitioner. He did not reply to the said notice. Thereafter the cases were filed against him under Section 138 of the Negotiable Instruments Act.

6. Learned Counsel for the Petitioner submits that he cannot resile from the situation that the trial has commenced and he could have made his application before the trial court prior to the commencement of recording of evidence. He submits that in a statement recorded under Section 313 of the Code of Criminal Procedure, he has specifically taken a stand that he did not receive the amount of handloan from the complainants, had demanded the return of the cheques and since the complainants claimed that the cheques were lost, he felt assured that the issue is closed. He submits that referring the cheques and receipts to the handwriting expert or the Central Forensic Science Laboratory as per Section 25 of the Indian Evidence Act, would reveal that the details are entered by some other persons and it would support his case that he had issued blank cheques only by way of security to the complainants. He prays that he is willing to suffer costs as well as expenses.

7. There can be no dispute that under Section 20 of the Negotiable Instruments Act, when a person has signed and delivered an instrument, either wholly blank or having written thereon or an incomplete negotiable instrument, he thereby gives authority to the holder thereof to make or complete the said instrument. The person

so signing such an instrument, would be liable to such instrument and the holder would then have the right to recover from the person delivering the instrument the amount intended to be paid or anything in excess thereof.

8. I find that the facts of these two cases are quite peculiar. The signatory to the cheques claims to be an illiterate person. The complainants claim that an amount of Rs. 9,00,000/- was given in cash to the Petitioner. It would be a matter of investigation as to how could such a large amount be given to the Petitioner in cash and whether the original complainants could account for the said amount, in the face of a categoric defence taken by the Petitioner that he had never received the said amount.

9. The Petitioner seems to be craving for a right of defence to the extent of the details entered in the instruments/cheques, which according to him were delivered only by way of security and were blank. I do not find that the original complainants would suffer irreparable loss or manifest inconvenience, if the liberty to refer the documents at Exh. 47 and 48 in the first case and Exh. 50 in the second case, to the Government authorized Handwriting Expert or Central Forensic Science Laboratory. If at all the complainants face inconvenience because of this exercise, they could be compensated by imposing costs upon the Petitioner.

10. Considering the peculiar facts as recorded above, these Petitions are partly allowed. Applications Exh. 47 and 48 in SCC No.

19869 of 2013 and SCC No. 19870 of 2013 are allowed subject to costs of Rs. 10,000/- each to be paid by the Petitioner in these two cases. The said costs shall be deposited within a period of four weeks and upon depositing the said costs, the original complainants shall withdraw the same in equal proportion without condition. The impugned orders dated 4/11/2015 in both these cases are quashed and set aside.

11. The trial court shall formally pass a specific order referring the documents mentioned in Applications Exh. 47 and 48 in the first case and Exh. 50 in the second case to the appropriate authority for seeking the expert opinion and the forensic report. The costs for entering upon the said exercise shall be borne by the Petitioner and the amount shall be deposited in the trial court without causing any delay.

(RAVINDRA V. GHUGE, J.)