

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.229 OF 2018

Laxmanrao s/o Bhagwanrao Dak,
Age : 55 years, Occu. Agri.,
R/o Samata Colony, Majalgaon,
Tal. Majalgaon, District Beed

PETITIONER
(Ori.Complainant)

VERSUS

Anil s/o Balasaheb Wakankar,
Age : Major, Occu. Service/Agri.,
R/o C/o Abhijeet Joshi,
Row-House No.E-8, Amul Sai Plaza,
Behind Railway Station,
Silk Mill Colony, Aurangabad

RESPONDENT
(Ori. Accused)

Mr. Pramod N. Muley, Advocate for the petitioner
Mr. J.R. Patil, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 17th JULY, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. The petitioner has challenged the order dated 5th January, 2018, passed by the learned Additional Chief Judicial Magistrate, Majalgaon below application

(Exh-42) in S.C.C. No.214 of 2016, seeking permission to recall the complainant/petitioner for further examination-in-chief.

3. The learned counsel for the petitioner submits that the learned Judicial Magistrate permitted the petitioner to produce original cheque subject matter of the complaint. However, inadvertently, the said cheque remained to be duly proved when the evidence of the petitioner was being recorded. The petitioner, therefore, filed an application (Exh-42) and sought permission to record his further examination-in-chief for formal proof of the said cheque. However, the learned Magistrate rejected the application. According to him, the impugned order is not legal, proper and correct. It would be prejudicial to the interests of the petitioner. He, therefore, prays that the impugned order may be set aside and the petitioner may be given an opportunity to formally prove the cheque in question by recalling him for further examination-in-chief.

4. The learned counsel for the respondent strongly opposed the Writ Petition. He submits that sufficient opportunity was given to the petitioner to produce the documents in support of his complaint. He closed his

evidence and the case was fixed for recording the statement of the respondent. Therefore, at that stage, there was no question of further examination-in-chief of the petitioner. The learned counsel supports the impugned order and prays that the Writ Petition may be dismissed.

5. The case of the petitioner is depending on the cheque that has remained to be formally proved though it has been produced before the Trial Court. It seems that due to some inadvertence, the said cheque remained to be formally proved. If the petitioner is not granted an opportunity to prove it, he is bound to suffer and the respondent is likely to succeed on that sole ground. No prejudice would be caused to the respondent if the petitioner is allowed to formally prove the cheque. The respondent would have an opportunity to cross-examine the petitioner. In the circumstances, I think fit to allow the Writ Petition; however, subject to payment of costs of Rs.5000/- by the petitioner to the respondent. In the result, I pass the following order:-

ORDER

(i) The impugned order 5th January, 2018, passed by the learned Additional Chief Judicial Magistrate, Majalgaon below application (Exh-42) in S.C.C. No.214 of 2016 is quashed and set aside.

(ii) The petitioner shall pay the costs of Rs.5000/- to the respondent within a week from today.

(iii) The Trial Court shall permit the petitioner to record his further examination-in-chief for formally proving the cheque in question.

(iv) The parties shall appear before the Trial Court on 2nd August, 2018 positively.

(v) Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE