

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 542 OF 2018

Hari Bhiva Chavan

Age: 50 years, Occu.: Agri. & Business,
R/o Gavhilitanda, Post Aurala,
Tq. Kannad, Dist. Aurangabad.

..PETITIONER

VERSUS

Amrut Sanjivani Sugarcane Transport
Company Pvt. Ltd., Sahajanandnagar,
Dist. Ahmednagar.

Through its Officer

Vijay Pandharinath Narode

Age: 50 years, Occu.: Service,
R/o Sahajanandnagar, Post Singnapur,
Tq. Kopergaon, Dist. Ahmednagar.

..RESPONDENT

Mr. S.B. Kadu, Advocate for petitioner

Mr. Y.D. Kale, Advocate h/f Mr. R.R. Karpe, Advocate
respondent.

CORAM : SANGITRAO S. PATIL, J.

DATE : 24th AUGUST, 2018

ORAL JUDGMENT :-

Rule, made returnable forthwith. Heard finally
with the consent of the learned Counsel for the parties.

2. The petitioner has challenged the order dated 11th
December, 2017 passed in Summary Trial Case no. 771 of

2010 below application (Exh.52), whereby his prayer for sending the disputed cheque to the Handwriting Expert for examination and report came to be rejected.

3. The learned Counsel for the petitioner submits that the respondent filed the above numbered criminal case under Section 138 of the Negotiable Instruments Act ("N.I. Act" for short), on the allegation that the cheque in the sum of Rs.2,50,236/- issued by him in favour of the respondent was dishonoured. He submits that it is the defence of the petitioner that he had given a blank cheque signed by him by way of security for performance of the agreement to supply labourers for cutting of sugarcane. The contents of the cheque were not filled up by the petitioner. The petitioner performed his part of contract, therefore, he asked for return of the cheque given to the respondent by way of security. However, the respondent misused that cheque by filling up the contents thereof at his own and filed the above numbered case. He submits that the petitioner is under an obligation to rebut the presumption under Section 139 of the N.I. Act. He was supposed to lead the evidence prior to recording evidence

of the respondent. He, therefore, filed application (Exh.52) requesting the Trial Court to send the cheque to the Handwriting Expert for examination and report in respect of the handwriting thereon. The learned Magistrate wrongly rejected that application. He submits that in order to enable the petitioner to defend himself properly and for fair trial, it is necessary to send the said cheque to the Handwriting Expert. He, therefore, prays that the impugned order may be set aside and the cheque in question may be ordered to be sent to the Handwriting Expert.

4. The learned Counsel for the respondent strongly opposed the petition. He submits that the present petitioner filed application (Exh.52) just to protract the trial. It is not at all necessary to send the said cheque to the Handwriting Expert for examination and report. The said cheque was not issued by the petitioner by way of security. He supports the impugned order and prays that the petition may be dismissed.

5. As per Section 139 of the N.I. Act, the

presumption is attached to the cheque that it has been issued for the discharge of any legally enforceable debt. It is for the petitioner to rebut the presumption. Therefore, it would be necessary for the petitioner to produce the evidence for rebutting the said presumption. The petitioner has come with a specific case that he had issued a blank cheque signed by him in favour of the respondent by way of security for performance of the agreement of supplying labourers for cutting sugarcane. According to him, the contents of the cheque have been filled up by the respondent at his own. In order to prove this defence, it would be immensely necessary to get the cheque in question examined through the Handwriting Expert. No prejudice would be caused to the respondent if the said cheque is sent to the Handwriting Expert for examination and report.

6. The observations made by the learned Magistrate in paragraph no.4 of the impugned order that the petitioner did not produce any evidence or did not take any defence in his statement under Section 313 of the Code

of Criminal Procedure, and therefore, application (Exh.52) is liable to be rejected, prima facie, appear to be perverse. As a matter of fact, the evidence of the respondent has not yet been recorded. Therefore, there was no question of disclosing the defence by the petitioner since no cross-examination was taken. Moreover, when the evidence of the respondent has not been recorded, the question of recording the statement of the petitioner under Section 313 of the Code would not arise. In the circumstances, the learned Magistrate cannot be said to have rightly and legally rejected the application (Exh.52). The petition will have to be allowed by quashing and setting aside the impugned order. In the result, I pass the following order :-

ORDER

- (I) Criminal Writ Petition is allowed.
- (II) The impugned order dated 11th December, 2017 is quashed and set aside.
- (III) The disputed cheque shall be sent to the Handwriting Expert for examination and report.

(IV) The petitioner shall deposit the necessary fees of the Handwriting Expert in the Trial Court within two weeks from today, failing which this order would stand vacated automatically.

(V) Rule is made absolute.

(VI) Criminal Writ Petition is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE

SSD