

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1418 OF 2017
WITH
WRIT PETITION NO. 1419 OF 2017**

1. M/s. Vyankatesh Farming .Petitioners
Having its office at,
Near Satoskar Hospital,
Old Post Office, Ajara,
Tal. - Ajara, Dist. - Kolhapur
Through its Partner Petitioner No. 2
2. Shri Laxman Gunaji Narvekar
Age : 46 yrs, Occu : Business
3. Sou. Aparna Laxman Narvekar
Age : 41 yrs, Occu : Business
R/o. Near Dr. Satoskar Hospital,
Old Post Lane, Ajara, Tal. - Ajara,
Dist. - Kolhapur.

Vs.

1. Tejas Traders, Uttur .Respondents
Through its Proprietor
Shri Mahadev Guruling Dhabbu
Age : 52 yrs, Occu : Business
R/o. Uttur, Tal. - Ajara,
Dist. - Kolhapur.
2. The State of Maharashtra

Mr. A. S. Patil, Advocate, for the Petitioners in both matters
Mr. H. Mundargi i/b. Mr. S. Sarkar, Advocate, for the Respondent No. 1
in both matters
Mr. S. R. Shinde, APP, for the Respondent No. 2 – State in both matters

CORAM : REVATI MOHITE DERE, J.

DATE : 13.02.2018

ORAL ORDER

- . Heard learned counsel for the parties.
2. Rule.
3. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.
4. By these Petitions, the Petitioners have impugned the Orders dated 18.02.2017 passed by the learned Additional Sessions Judge, Gadhinglaj, Kolhapur below Cri. Appeal Nos. 37 & 36 of 2016, by which the learned Sessions Judge was pleased to set aside the Orders dated 28.09.2016 passed by the learned Judicial Magistrate First Class, Ajara, District – Kolhapur below Exhs. 78 in both S. C. Nos. 130 & 129 of 2014 respectively.
5. Learned counsel for the Petitioners in both the Petitions submits that it was the case of the Petitioners right from the

commencement of the case / trial, that the signature on the cheque was not that of Petitioner No. 2 and that it was a scanned signature. He submitted that the Petitioners had laid the said foundation in the cross-examination of the Respondent No. 1 – Complainant, when he was examined. He further submitted that after the examination of the Petitioner No. 2's statement under Section 313 of the Cr.P.C. was over, the Petitioners examined PW.1 i. e. a Bank witness and thereafter, filed Applications i. e. Exhs. 78 respectively in S. C. Nos. 130 & 129 of 2014 and prayed that the cheque in question be sent to the Government Laboratory for deciding whether, it contains the scanned signature of the Petitioner. He submitted that the Petitioners had not only laid the foundation in the cross-examination by suggesting that the signature on the cheque in question was a scanned signature and not by pen and hence, it was necessary to send the cheque to the Forensic Science Laboratory, for examination. He submitted that the Sessions Court clearly erred in law by setting aside the Order of the learned Judicial Magistrate First Class, Ajara, allowing the Petitioners' Applications i. e. Exhs. 78 in both the cases i. e. S. C. Nos. 130 & 129 of 2014.

6. Learned counsel for the Respondent No. 1 – Complainant opposed the Petitions. He submitted that no interference was warranted

in the impugned Orders. He submitted that the said Applications were filed by the Petitioners at the fag end of the trial, with the sole purpose of delaying the trial. He submitted that it is also the case of the Petitioners that the said cheque was given as a security with no signature of the Petitioners and as such, the said defence was not tenable.

7. Perused the papers including the impugned orders. The Respondent No. 1 – Complainant filed a complaint as against the Petitioners in the Court of the learned Judicial Magistrate First Class, Ajara, District – Kolhapur for the alleged offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act, 1881. The learned Magistrate, Ajara vide Order dated 01.10.2014 was pleased to issue process as against the Petitioners for the said offences. It is not in dispute, that the Complainant stepped into the witness box and was examined by the Petitioners' Advocate. The tenor of the cross-examination was to suggest that the cheque in question was not signed by the Petitioner No. 2 but, it was a scanned signature. Thereafter, the Petitioner No. 2's statement under Section 313 of Cr.P.C. was recorded, after which the Petitioners examined a Bank witness in support of their case. It appears that the said Bank witness has deposed that in their

branch, there was no mechanism to check the signature on the cheque, whether the signature was by pen or it was a scanned signature. In view of the same, the Petitioners filed the Applications, being Exhs. 78 in both the cases i. e. S. C. No. 130 & 129 of 2014 and prayed that the cheque in question be sent to the handwriting expert for verification of the signature on the said cheque whether it was a signature made by pen or it was a scanned signature. Learned Magistrate vide Order dated 28.09.2016 was pleased to allow the said Applications.

8. Being aggrieved by the said Order dated 28.09.2016, the Respondent No. 1 – Complainant filed Cri. Revision Application Nos. 36 & 37 of 2016 in the Sessions Court. Learned Additional Sessions Judge, Gadhinglaj vide Order dated 18.02.2017 was pleased to allow the said Revision Applications and consequently, set aside the Order dated 28.09.2016 passed by the learned Judicial Magistrate First Class, Ajara, District – Kolhapur below Exhs. 78 in both the cases i. e. S. C. Nos. 130 & 129 of 2014 respectively. The observation of the learned Sessions Judge that there was no suggestion put to the Complainant and witnesses during their cross-examination is incorrect and contrary to the record. In fact, it appears during the pendency of these Petitions, the Petitioner No. 2 examined himself as defence witness No. 2 and in his

examination-in-chief, the Petitioner No. 2 has also deposed that the signature on the cheque was a scanned signature.

9. Considering that the Petitioners had laid the foundation for the same in the cross-examination and had also examined defence witness with regard to the same, the learned Sessions Judge erred in setting aside the Order of the learned Magistrate, allowing the Applications i. e. Exhs. 78 in both the cases i. e. S. C. Nos. 130 & 129 of 2014. Accordingly, the following order is passed.

ORDER

(i) The Orders dated 18.02.2017 passed by the learned Additional Sessions Judge, Gadhinglaj, Kolhapur below Cri. Appeal Nos. 37 & 36 of 2016 are quashed & set aside;

(ii) The Orders dated 28.09.2016 passed by the learned Judicial Magistrate First Class, Ajara, District – Kolhapur below Exhs. 78 in both the cases i. e. S. C. Nos. 130 & 129 of 2014 respectively are restored;

(iii) The Petitioners shall comply with the Orders dated 28.09.2016 passed by the learned Judicial Magistrate First Class, Ajara, District – Kolhapur;

(iv) The Forensic Science Laboratory shall submit their report

as expeditiously as possible and in any event, within four weeks from the date of receipt of the documents;

(v) On receipt of the report, the trial Court is requested to decide the case as expeditiously as possible and preferably within eight weeks thereafter.

10. Accordingly, the Petitions are disposed of.

Rule is made absolute in the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)