

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.93 OF 2019

Yogesh s/o Vinayakrao Patil,
Age-43 years, Occu:Service,
R/o-Plot No.30, A-5, N-4, Parijat
Nagar, Near M.S. Public School,
Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Investigation Officer,
Mukundwadi Police Station,
Aurangabad,
- 2) Balu Vinayak Kadam,
Age-38 years, Occu:Service,
R/o-Plot No.5-A, Vajreshavar nagar,
Harsul, Pisadevi Road,
Aurangabad.

...RESPONDENTS

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Mr.V.S. Janephalkar Advocate for Petitioner.
Mr.S.Y. Mahajan, A.P.P. for Respondent No.1.
Mr.C.K. Shinde Advocate for Respondent No.2.

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CORAM: V.M. DESHPANDE, J.

DATE : 20TH MARCH, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. Heard Shri Janephalkar, the learned counsel for the Petitioner, Shri S.Y. Mahajan, the learned Additional Public Prosecutor for the State and Shri C.K. Shinde, the learned counsel for the original complainant/ Respondent No.2.

3. By the present Writ Petition, the Petitioner is challenging the order passed by the learned Judicial Magistrate, First Class, Court No.3, Aurangabad, below Exhibit-50 in S.C.C. No.563 of 2017, whereby, the application filed on behalf of the Petitioner for sending the document "money receipt" to the handwriting expert, is rejected.

4. Few facts before reaching to the final verdict are required to be detailed in the present order.

5. Respondent No.2 is the original complainant and the Petitioner is the accused, who is facing the prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act. After the particulars were explained to the Petitioner/accused, the trial proceeded further. Respondent No.2 entered into witness box to prove his case against the Petitioner. After his examination-in-chief, he was thoroughly cross-examined by the counsel for the Petitioner. Thereafter, Respondent No.2 also produced the evidence of his witnesses. They were also thoroughly cross-examined. After completion of the evidence from the complainant side, the complainant filed closure purshis. Thereafter,

learned Judicial Magistrate examined the Petitioner under Section 313 of the Code of Criminal Procedure. In the said, he stated that he wish to adduce evidence. Accordingly, on behalf of the accused person, two witnesses were examined. After the completion of the evidence of the Petitioner/accused, he produced one receipt, styled as "compromise receipt", which is taken on record and it is at Exhibit-50. The learned Magistrate, in my view, thereafter correctly recalled the complainant. The complainant re-entered in the witness box and he was also cross-examined. He denied his signature on the said document. At this stage, the application for sending the document to handwriting expert was moved and the said request is turned down.

6. It appears that the Petitioner is a person who appears to have tendency to take chances. During the course of the cross-

examination of the complainant, it was available for the Petitioner to produce the said receipt, however, the said was not filed on record. Thereafter also when he was examined under Section 313 of the Code of Criminal Procedure, that time also, inspite of opportunity being given to him, the said was not availed of, and after completion of his defence evidence, he produced the document in question. Thus, the production of the document in question itself is suspicious circumstance, in my view. It appears that the Petitioner is trying his level best to prolong the litigation by resorting to the method like filing the applications after the evidence was closed. The learned Magistrate has considered the application on its own merits and found that the application was devoid of any substance and therefore it was rejected. I am of the opinion that, no different view can be taken, as taken by the learned Magistrate.

8. Consequently, there is no merit in the
Petition. The Writ Petition is dismissed. Rule
stands discharged.

[V.M. DESHPANDE, J.]

asb/MAR19