

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 960 OF 2017

Ishwar S/o. Bajirao Beldar,
Age: 30 Years, Occu.: Agriculturist,
R/o. At. Mendolde, Post. Uchande,
Tq. Muktainagar, Dist. Jalgaon.

... **PETITIONER**

VERSUS

Sunil S/o. Dinkar Patil,
Age: 53 Years, Occu.: Business,
R/o. Ichhapur, Tq. Barhanpur,
Dist. Barhanpur, (M.P.)

... **RESPONDENT**

...

Mr. Vijay B. Patil, Advocate for Petitioner.

Mr. A. G. Talhar, Advocate for Respondent.

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CORAM : **T. V. NALAWADE, J.**

DATE : 04th March, 2019.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent, heard
both the sides for final disposal.

2 S.C.C. No.171 of 2015 is filed by the present Respondent in the Court of learned Judicial Magistrate First Class, Muktainagar, District Jalgaon. It appears that during the evidence of Complainant, the present Petitioner, Accused filed application at Exhibit-28 for giving direction to send the bill-book of the shop of Complainant to handwriting expert with specimen signature of the Accused for comparison. This bill-book was brought to the Court due to direction given by the Trial Court. After hearing both the sides, the learned Judicial Magistrate First Class rejected the application on 22nd March, 2017. This Court has carefully gone through the order made by the learned Judicial Magistrate First Class and the relevant portion is in paragraph No.3, which is as under:

“3] After hearing both the sides at length it appears that it is not disputed by accused that the signature of the cheque is not belongs to him. Therefore, it appears that accused has admitted his signature over the cheque but he has disputed the signature over the bill-book. After perusal of signature of Vakalatnama, signature of the cheque and signature over the duplicate copy of bill are matched with each-other. Therefore, as per Sec. 71 of the Evidence Act I am of the opinion that all the signatures of the accused matched with each-other. Moreover, it appears that

complainant filed his affidavit of evidence and also he has produced bill-book as per the request of the accused and thereafter present accused filed this application at belated stage with intent to prolong the matter.”

3 In the first place, it can be said that the turn of the Accused to lead evidence has not come. In view of the submissions made, it can be said that the document, credit bill needs to be treated as exhibited as it is brought on record by the defence. Once that document is exhibited, then it becomes open to the Accused to prove that it is forgery as provided under Section 102 of the Evidence Act. For proving the offence punishable under Section 138 of the Negotiable Instruments Act, it is necessary for the Complainant to make out case of existing liability as against which the cheque was issued. When Complainant makes out that case, the Accused gets the right to show that presumption available under Section 139 of the Negotiable Instruments Act, which is rebuttable, can be rebutted by the evidence of Accused. In the present matter, Accused wants to show that the said bill, which is a carbon copy, is a forged document, not bearing his signature and so opportunity needs to be given to him

to prove that it is forgery. The submissions made show that the evidence of Complainant came to be closed and the statement of Accused under Section 313 of the Code of Criminal Procedure came to be recorded on 13th June, 2018. The present proceeding came to be filed when the matter was kept for evidence of the Accused. This Court holds that the learned Magistrate ought not to have compared the signature of the Accused, which is admitted with the disputed signature by using the provision of Section 71 of the Evidence Act. Further, the Magistrate ought not to have decided application Exhibit-28 when the evidence of the Complainant was being recorded. Thus, the order made by the learned Judicial Magistrate First Class on Exhibit-28 needs to be set aside. The Magistrate is expected to give exhibit to the said bill, which is disputed by the Accused and after giving exhibit to that bill, the said bill needs to be sent to handwriting expert alongwith specimen signatures and if required contemporary signatures of the Accused if the Magistrate feels it appropriate to collect contemporary signature of the Accused. The expenses of the said exercise need to be borne by the Accused. So, order on Exhibit-28 is set aside. The application stands allowed. Costs of getting opinion of the handwriting expert to be borne by the Accused. The

period for that is to be fixed by the learned Judicial Magistrate First Class. In aforesaid terms, the petition is allowed. Rule is made absolute.

[T. V. NALAWADE, J.]

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