

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

CRIMINAL WRIT PETITION NO. 1175 OF 2017

Madhavrao s/o Ramchandra Jadhav,
Age: 50 years, Occu. Agriculture,
R/o : Chinchala, Tq. Biloli,
Dist. Nanded.

... PETITIONER

VERSUS

Bhagwan s/o Kisan Nagare,
Age: 45 years, Occu. Service,
R/o : Jai Bhavaninagar, N-4,
CIDCO, Aurangabad.

... RESPONDENT

...

Mr. Omgashad B. Boinwad, Advocate for Petitioner.

Mr. Rajat V. Patodi, h/f Mr. Y. P. Deshmukh, Advocate for Respondent.

...

WITH

CRIMINAL WRIT PETITION NO. 1185 OF 2017

Madhavrao s/o Ramchandra Jadhav,
Age: 50 years, Occu. Agriculture,
R/o : Chinchala, Tq. Biloli,
Dist. Nanded.

... PETITIONER

VERSUS

Bhagwan s/o Kisan Nagare,
Age: 45 years, Occu. Service,
R/o : Jai Bhavaninagar, N-4,
CIDCO, Aurangabad.

... RESPONDENT

...

Mr. Omgashad B. Boinwad, Advocate for Petitioner.

Mr. Rajat V. Patodi, h/f Mr. Y. P. Deshmukh, Advocate for Respondent.

...

WITH

CRIMINAL WRIT PETITION NO. 1428 OF 2017

Bhagwan s/o Kishan Nagare,
Age: 41 years, Occu. Nil,
R/o : Jai Bhavani Nagar, N-4,
CIDCO, Aurangabad.
(Near Shivaji Statute) Aurangabad
P.S. CIDCO, Aurangabad.

... **PETITIONER**

VERSUS

Rukmin D/o Madhavrao Jadhav,
Age: 27 years, Occu. Nil,
R/o : Thane, Tq. Thane,
District Thane,
At present Chinchala, Tq. Biloli,
District Nanded,
P.S. Biloli, Tq. Biloli, District Nanded.

... **RESPONDENT**

...

Mr. Rajat V. Patodi, h/f Mr. Y. P. Deshmukh, Advocate for Petitioner.

Mr. Omgashad B. Boinwad, Advocate for Respondent

...

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 All the three petitions have arisen out of orders made by the learned Judicial Magistrate First Class in the matters filed under Section 138 of the Negotiable Instruments Act. Criminal Writ Petition No.1428 of 2017 is filed by the original Complainant to challenge the order made by the learned Additional Sessions Judge, Aurangabad by which a direction is given by the Sessions Court to send the cheque to handwriting expert with specimen signature of the Accused. The learned Judicial Magistrate First Class had rejected that application. In other two matters, the same learned Judge has allowed revisions filed by the original Complainant and has set aside the orders made by the learned Judicial Magistrate First Class for sending the cheques with specimen handwriting and signature of Accused to handwriting expert. The Petitioner of these two proceedings is the father of Respondent, Accused from Criminal Writ Petition No.1428 of 2017.

3 This Court has carefully gone through the orders made by the learned Judicial Magistrate First Class to find out the rival contentions. The original Complainant was running a training center, coaching class to help the aspirants, who wanted to get job in Military and Police departments. He has filed private complaints on the basis of cheques, which were allegedly issued by Accused persons for payment of fees. It is the contention of the Accused that blank cheques were obtained when the candidates were admitted in the institution by the Complainant. It his the contention that the contents of the cheque and also signature are not of the account holder and the writing and signatures are forged. It is indirect contention that there was no liability of Accused in respect of amounts mentioned in the cheques.

4 The submissions made show that the evidence of the Complainant is not closed in all the three matters. This circumstance needs to be kept in mind. This Court holds that in view of the nature of rival contentions, it was open to the Accused to make such application, but the Magistrate ought to have decided those

applications after closure of the evidence of Complainant, after recording the statement of Accused under Section 313 of the Code of Criminal Procedure and only after giving of evidence, affidavit of examination-in-chief by the Accused having aforesaid contentions. It is open to the Accused to open the defence in the beginning itself and so the orders to allow the applications can be made in advance also in view of the nature of contentions. As already observed, the Accused is denying both handwriting appearing on cheques and the signature appearing on the cheques. The submissions made show that the Complainant has filed such private complaints against many persons by using blank cheques. In view of all these circumstances, this Court holds that the petitions filed by Accused like Criminal Writ Petition No.1175 of 2017 and Criminal Writ Petition No.1185 of 2017 need to be allowed but Criminal Writ Petition No.1428 of 2017 needs to be dismissed. So, the Magistrate needs to first see that the evidence of the Complainant side is closed and the turn of the defence comes and the matters can be sent to the expert only after filing of the affidavit as evidence by the Accused having aforesaid contentions. If aforesaid contentions are not appearing in the affidavit, it will be open to the Magistrate to pass other order and the cheques may not be sent to

the expert in those cases. So, Criminal Writ Petitions Nos.1175 and 1185 of 2017 are allowed and rule is made absolute in those matters in aforesaid terms. Criminal Writ Petition No.1428 of 2017 stands dismissed and rule is discharged in this petition. The learned Judicial Magistrate First Class is expected to dispose of all the three matters within six months from today.

[T. V. NALAWADE, J.]

ndm