

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

CRIMINAL WRIT PETITION NO.1694 OF 2019

Sunil Pundalik Admile,
Age 52 yrs., Occ. Business,
R/o Bhaji Bhakar Nagar, Murud,
Tq. & Dist. Latur. = **PETITIONER**

VERSUS

Madhukar Tukaram Kshirsagar,
Age 50 yrs., Occ. Service,
R/o Sambhaji College, Murud,
Tq. & Dist. Latur. = **RESPONDENT**

Mr.TM Venjane, Advocate for Petitioner/s
Mr.SV Gundre, Advocate for Respondent.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11th DECEMBER, 2019.

JUDGMENT

1) Rule. Rule made returnable forthwith and matter is taken up for final hearing with consent of both parties.

2) Present petition has been filed by original complainant challenging the judgment and order passed by learned Additional Sessions Judge, Latur in Criminal Revision No.38 of 2019 dt. 05-09-2019; thereby reversing the order passed below Ex. 55 in S.T.C.No.363 of 2017 dt.26-06-2019 by learned

6th Joint Judicial Magistrate First Class, Latur.

3) The factual matrix leading to the petition are that, the present petitioner has filed said complaint under Section 138 of the Negotiable Instruments Act against the present respondent-accused. Complainant has adduced evidence after the accused had pleaded 'not guilty'. Statement of the accused under Section 313 of Code of Criminal Procedure has also been recorded. Accused had thereafter examined himself and his cross-examination was taken on behalf of complainant. Accused has then preferred application at Ex.55 for sending the disputed cheque for the opinion of the handwriting expert. It was contended in the said application that the said cheque was given by him as security towards bill of a friend. He had signed only the blank cheque; however, the complainant has filled the disputed cheque afterthought and then filed false complaint.

4) The said application was objected by the complainant. It was contended that accused has not raised such defence at any earlier point of time.

He has admitted his signature on the cheque and issuance thereof. The application is nothing but an attempt to protract the matter.

5) After hearing both sides, the learned Magistrate has rejected the application. Accused had preferred Revision under Section 397 of Code of Criminal Procedure in order to challenge the said order passed by the learned Magistrate.

6) After hearing both sides, the learned Additional Sessions Judge, Latur has allowed the revision and after setting aside the order passed by learned Magistrate, directions have been issued to send the matter for the opinion of the handwriting expert. Hence, this petition under Article 227 of Constitution of India.

7) Heard learned Advocate Shri. T.M. Venjane for petitioner- complainant and learned Advocate Shri. S.V.Gundre for respondent- accused.

8) It has been vehemently submitted that the learned Additional Sessions Judge failed to

consider that the accused has admitted the issuance of cheque and his signature on the same. There was absolutely no necessity to send the cheque for the opinion of handwriting expert. Learned Magistrate had rightly rejected the application on the ground that there were no bonafides behind filing such application. The only intention was to protract the matter. Learned Additional Sessions Judge, exceeded in his jurisdiction in allowing the revision and giving directions.

9) Per contra, the learned Advocate for respondent submitted that the learned Additional Sessions Judge, has considered all the aspects properly. Accused had taken a defence that he had issued blank cheque towards the security. Accused needs to be given a proper opportunity to defend himself. Even with the naked eyes, we can see that the handwriting on the cheque differs from the signature. There was no question raising any presumption, merely on the basis of acceptance of fact of signature on the cheque. A proper and legal order has been passed, which requires no interference.

10) Perusal of the cross-examination of the complainant taken on behalf of accused would show that accused is not denying his signature on the cheque. He has given suggestion that it was a blank cheque containing his signature. Under the said circumstance, the learned Magistrate was correct in taking into consideration Section 20 of the Negotiable Instruments Act and various authorities on the point. We also take note of recent pronouncement of Apex Court in **Bir Singh vs Mukesh Kumar – (2019) 4 SCC 619, (decided on 6 February, 2019)** wherein it has been observed that, “If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence”.

11) So there is bound to be the difference in handwriting of the signature and the other contents on the cheque. In fact, no question was asked to the complainant in respect of alleged difference in

handwriting in his cross taken on behalf of accused. When no background was laid, the learned Magistrate was justified in rejecting the application Ex.55. In his examination-in-chief itself, the accused is stating the fact that he had issued the disputed cheque; however, says that it was blank but signed by him. This fact has been got confirmed in his cross taken on behalf of complainant. Under such circumstance, there was no scope for sending the said cheque for the opinion of the handwriting expert.

12) Learned Additional Sessions Judge has not considered the evidence recorded in the matter. The defence has not been taken into consideration, when it is observed that accused has not admitted the handwriting on the cheque. It was also not considered that the application Ex.55 was nothing but an attempt to protract the trial. The revisional powers under Section 397 of Code of Criminal Procedure ought not to have been used such cases.

13) In view of the above-said discussion, the

writ petition stands allowed. The judgment and order passed in Criminal Revision No.38 of 2019 by learned Additional Sessions Judge, Latur is hereby set aside. The order below Ex.55 in S.T.C.No.363 of 2017 passed by learned Judicial Magistrate First Class, (Court No. 6), Latur stands restored. Rule is made absolute accordingly.

(SMT. VIBHA KANKANWADI,J.)

BDV
fldr 19.12.19