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

CRIMINAL APPLICATION NO.799 OF 2019

Vijaykumar Gulabchand Baldava	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr. Abhishek Kulkarni, for the Applicant.

Ms. Veera Shinde, A.P.P for the Respondent No.1 - State.

Ms. M. A. Devkar, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 28th NOVEMBER, 2019

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the applicant has impugned the order dated 12th March, 2019, passed by the learned Civil Judge Junior Division, Pandharpur, below Exhibit – 87, in STC No.502 of 2013, as well as the order dated 2nd May, 2019, passed by the learned Judicial Magistrate First Class, Pandharpur, below Exhibit – 1.

3. Learned Counsel for the applicant submits that the two

documents i.e. the cheque and promissory note, ought to be sent to the handwriting expert for ascertaining the age of the ink used on the said documents. He submits that the age of the ink will show that the said documents have been misused by the complainant. Learned Counsel relied on the order dated 28th November, 2018, passed by the Single Judge of this Court at Aurangabad Bench, in the case of ***Vijaykumar Gulabchand Baldava v/s Gautam Prakash Kulkarni***, which is on page 31 of the application, in support of his submission.

4. Learned Counsel for the Respondent No.2 opposed the application. She submits that no interference is warranted in the impugned orders. She further submits that the statements of the accused is already recorded under Section 313 of the Code of Criminal Procedure and the matter is posted for arguments. She submits that the filing of the application praying for sending the cheque and the promissory note to the handwriting expert are delaying tactics adopted by the advocate.

5. Perused the papers as well as the impugned orders. The applicant (original accused) is facing prosecution under Section 138 of Negotiable Instruments Act, in the Court of the learned Judicial Magistrate First Class, Pandharpur in S.T.C. No.502 of 2013. It appears that after the

examination-in-chief and cross of the Respondent No.2– Complainant was over, the defence i.e. the applicant examined 3 witnesses. It is after the examination of the said 3 witnesses that the applicant filed an application (Exhibit – 87), before the learned Magistrate with a prayer to send the cheque and the promissory note to the handwriting expert for ascertaining the age of the ink used for writing the dates, name, amount as well as the signature. The said application (Exhibit – 87) was rejected by the learned Magistrate vide order dated 12th March, 2019.

6. It also appears that the applicant had filed an adjournment application (Exhibit – 102) and sought an adjournment. The learned Magistrate vide order dated 2nd May, 2019, passed the following order:-

Order
[Dated 2/5/2019]

“This matter is fixed for defence evidence. In this matter in the year 2017 the statement under Section 313 Cr.PC is recorded. In this matter defence has examined three witness. The last witness is examined by the accused eight month ago. On last date, Ld. Advocate for the accused prayed for adjournment for hearing. In present matter accused had taken total 12 adjournment on the same ground. Record shows that the accused is playing dilatory tactics. Hence, considering the opportunities availed by the accused,

this application stands rejected.”

It appears that thereafter the learned Magistrate was pleased to pass another order dated 2nd May, 2019, below Exhibit - 1. The said order reads thus:-

Order
Dated 2/5/2019

“Inspite of various opportunities accused failed to lead his further evidence in his defence. In addition to observation made in the order passed below exh. 102 on todays application for adjournment the conduct of accused shows that he is not interested in adducing his further evidence hence the evidence of accused is closed.”

7. Being aggrieved by the order dated 12th March, 2019 passed by the learned Civil Judge Junior Division, Pandharpur, below Exhibit – 87, in STC No.502 of 2013, as well as the order dated 2nd May, 2019, passed by the learned Judicial Magistrate First Class, Pandharpur, below Exhibit – 1, the applicant has approached this Court by filing the aforesaid application. As noted above, the complainant’s evidence is over and the defence has also examined 3 witnesses and it is at this stage that the aforesaid application (Exhibit – 87) was filed by the applicant. The matter

is now posted for arguments. As noted by the learned Judge, it appears that the applicant has taken 12 adjournments and as such, he is trying to delay the proceedings, which have come at a final stage. As noted by the learned Magistrate in para 7 of the impugned order dated 12th March, 2019, the applicant has admitted his signature on the disputed cheque as well as the promissory note and therefore the question of sending the cheque and the promissory note to the handwriting expert do not arise. It also appears that the said application has been filed belatedly and no foundation is laid for sending the said cheque to the handwriting expert. The order relied on by the learned counsel for the Applicant is clearly distinguishable and will not apply to the facts of the present case.

8. Considering the aforesaid, no infirmity can be found in the impugned order dated 12th March, 2019, passed by the learned Civil Judge Junior Division, Pandharpur, below Exhibit – 87, in STC No.502 of 2013, as well as the order dated 2nd May, 2019, passed by the learned Judicial Magistrate First Class, Pandharpur, below Exhibit – 1, warranting interference by this Court, under Section 482 of the Code of Criminal Procedure.

9. Accordingly, the application is dismissed. All contentions of all the parties are kept open.
10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.