

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

**CRIMINAL WRIT PETITION NO.12 OF 2020**

Tarabai Balkrishna Patil  
Age: 51 years, Occ: Household,  
R/o. Plot No.6, Rushikesh Park,  
Jalgaon Road, Pachora Tal. Pachora Dist. Jalgaon.

... **Petitioner**  
(Orig. Respondent)

**VERSUS**

- 1] The State of Maharashtra,
- 2] Shriram City Union Finance Ltd.  
through its Branch Manager  
Vithal Shopping Complex,  
Near Omkareshwar Temple Jalgaon,  
Tal. Dist. Jalgaon

**Respondents**  
(R-2 Ori. Complainant)

...  
Advocate for Petitioner : Mr. Mahesh R. Sonwane  
AGP for respondent/State : Mr. S.W. Mundhe  
Advocate for Respondent No.2 : Mr. V.Y. Bhide

...  
**CORAM : MANGESH S. PATIL, J.**

**DATE : 04.03.2021**

**JUDGMENT :**

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is the accused in a trial for the offence punishable under Section 138 of the Negotiable Instruments Act, initiated at the instance of the respondent No.2 Finance Company. She is invoking the powers of this Court under Article 227 of the Constitution of India in challenging the order passed by the learned trial Judge on her Application (Exhibit-65) thereby refusing to send the cheque in question seeking opinion of an handwriting expert.

3. The learned advocate for the petitioner would submit that the petitioner has been denying the fact of issuance of the cheque. It is her specific stand in her examination-in-chief. Apparently, there is a difference in the ink as well as language in which the contents of the cheque have been filled and the signature of the drawer appearing thereon. He would further point out that even the witness for the respondent No.2 complainant has admitted this fact and it should have been referred to the Handwriting Expert seeking opinion.

4. The learned advocate for the respondent No.2 would submit that the petitioner's Application was false and frivolous. She has not been firm with her stand/defence.

5. There is no consistency in the cross-examination of the witness for the respondent No.2, answers given by her in her examination under Section 313 of the Code of Criminal Procedure and her stand in her examination-in-chief. He would further submit that even her conduct is not compatible with the defence. She has not replied the statutory notice served upon her after dishonour of the cheque. In view of such inconsistent stand of her, no fault can be found with the reasoning assigned by the learned Magistrate in rejecting her Application.

6. I have carefully gone through the papers. Particularly, the Application submitted by the petitioner (Exhibit-65) and the impugned order coupled with copies of the testimonies and her statement under Section 313 of the Code of Criminal Procedure.

7. In the normal course, obviously it would be a right of an accused facing the prosecution for an offence punishable under Section 138 of the Negotiable Instruments Act to seek/solicit an opinion of an expert as far as the genuineness of the cheque stated to be issued and for dishonor of which the prosecution is launched.

8. However, simultaneously, it cannot be ignored that the request should be in accordance with and consistent with stand being taken during the course of the Trial. Not only this but even the conduct of an accused prior to the launch of the prosecution would also be relevant in as much as a proceeding under Section 138 of the Negotiable Instruments Act has to be preceded by a statutory notice to be served. Bearing in mind all these matters, if one examines the matter in hand, it is quite apparent that even the petitioner is not sure about the stand to be taken.

9. She has denied to have received any statutory notice and obviously, she has not responded to it. During cross-examination of the witness for the respondent No.2, at the beginning it has proceeded with the questions which clearly demonstrate that she has been admitting to have applied for a loan and having purchased a vehicle and repaid certain portion of the loan. It is also pertinent to note that even a suggestion is put to the effect that though money was refunded, the cheque mentioning a higher amount which was not due, was presented for encashment. Further cross-examination is also suggestive of the fact that she has been admitting that simultaneously the respondent No.2 has initiated an Arbitration Proceeding since there was an agreement between the two sides and that was a matter of civil dispute. It is at the fag end of the cross-examination of PW-1 that in one line signature of the cheque has been disputed.

10. In her examination under Section 313 the petitioner has been conspicuously silent as to the aspect of genuineness of the cheque in question and more importantly the signature appearing on it purporting to be that of her.

11. In her two line examination-in-chief she has stated that she had not borrowed any loan, she had not issued the cheque, it does not bear her signature and she did not receive any notice and the case is false.

12. It is thus quite apparent that as has been rightly submitted by the learned advocate for the respondent No.2 the petitioner has not been consistent with the stand. In one breath she is admitting the loan having been borrowed from the respondent No.2 and the dispute having gone to the Arbitrator. She also suggests that she had paid some installments. She alleges misuse of the cheque as well but simultaneously has been bold enough to deny her signature thereon. Having noticed all these circumstances, the learned Magistrate has by the impugned order rejected the Application. There is no apparent illegality for this Court to cause any inference.

13. The Writ Petition is dismissed. The Rule is discharged.

**(MANGESH S. PATIL, J.)**