

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**924 CRIMINAL WRIT PETITION NO.379 OF 2021**

**DILIP @ RAJENDRA MANSUKHLAL BAFNA  
VERSUS  
DR. VASANT SHANKARRAO MANE**

Mr. Mahesh K. Bhosale, Advocate for the petitioner  
Mr. P. S. Dighe, Advocate for the respondent

**CORAM : N. R. BORKAR, J.**

**DATE : 24-11-2021**

**P. C.**

. This petition takes an exception to the orders dated 15-02-2021 passed below Exh.30 and Exh.31 in Summary Criminal Case No. 603 of 2018.

2. The respondent herein had filed the complaint case against the present petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The respondent after adducing his evidence, has moved an application at Exh. 30 seeking permission to adduce the additional evidence in view of certain questions asked to him in cross-examination. The learned Magistrate has allowed the said application.

3. The respondent has moved another application at Exh. 31 seeking permission to refer the cheque in question and affidavit at Exh. 29 to hand writing expert. The learned Magistrate has allowed the said application also.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The learned counsel for the petitioner submits that the learned Magistrate erred in allowing the application at Exh. 30 which came to be moved by the respondent just to fill up the lacunas in his case. It is submitted that in such circumstances, the trial court ought not to have allowed the said application at Exh. 30.

6. As regards the order below Exh. 30 the learned counsel for the petitioner submitted that the petitioner has not disputed the signature on the cheque in question. It is submitted that considering these facts, the learned Magistrate ought not to have referred the cheque to hand writing expert.

7. On the other hand learned counsel for the respondent submits that the trial court rightly allowed the application at Exh. 30. It is submitted that for just decision of the case, the trial court rightly permitted the respondent to adduce further evidence. It is, accordingly submitted that no interference is called for in the order impugned passed below Exh.30. In support of the submission the learned counsel for the petitioner has relied upon the judgment of this court in the case of Karim Hasan Patel Vs State of Maharashtra reported in 2012 ALL MR (Cri) 2378. So also, the judgment of the Hon'ble Supreme Court in the case of Natasha Singh Vs Central Bureau of Investigation reported in (2013) 5 SCC 741.

8. As regards the order below Exh. 31 the learned counsel for the respondent submitted that the trial court was justified in referring the cheque in question and affidavit to hand writing expert. It is submitted that though the petitioner has admitted the signature on the cheque however, according to him blank cheque was issued to some third party. It is submitted that thus, the trial court committed no error in referring the cheque to

hand writing expert. It is submitted that the petitioner by affidavit at Exh.29 has acknowledged receipt of the amount however, the petitioner has disputed the genuineness of the affidavit. It is submitted that considering these facts, the trial court was justified in referring the cheque and affidavit to hand writing expert.

9. I have perused the application at Exh. 30. Perusal of the application shows that certain questions were asked in the cross-examination and by referring to those questions the said application came to be moved. If according to the respondents further evidence which he wants to adduce is necessary for just decision of the case, then it is not understood as to why it was not adduced at first instance itself, as it is not the case of the respondent that there was any impediment in adducing the said evidence. The application is completely based on the questions asked in the cross-examination. The attempt, therefore, appears to be to fill up the lacunas. Considering these facts, the order passed below Exh. 30 cannot be sustained.

10. As regards referring the cheque to the hand

writing expert, the defence of the petitioner is that blank cheque was issued. Similarly, the petitioner has disputed the genuineness of the affidavit. Considering the defence of the petitioner, the trial court was justified in referring the cheque as well as affidavit to hand writing expert. Therefore, no interference is called for in the order passed below Exh. 31. Hence, the following order is passed:

**ORDER**

- i. The petition is partly allowed.
- ii. The order impugned passed below Exh.30 is set aside.
- iii. The order impugned passed below Exh. 31 is confirmed.

[ N. R. BORKAR, J. ]