

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1008 OF 2020

Vijaykumar Gulabchand Baldava ... **APPLICANT**

VERSUS

Gautam Prakash Kulkarni ... **RESPONDENT**

.....
Mr. N.S. Jaju, Advocate for applicant
Mr. S.V. Natu, Advocate for respondent
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CORAM : R. G. AVACHAT, J.

DATE : 19th JUNE, 2021

ORDER:

The challenge in this Criminal Application is to the order dated 11/3/2020, passed by the Court of Judicial Magistrate, First Class, Shevgaon on application Exh.322 in S.T.C. No.388/2006. By the impugned order, the application moved by the applicant for sending the cheque to an expert for ascertaining age of the ink in which the cheque has been written and as to whether the figures appearing in the cheque are in the handwriting of the signatory thereof, came to be rejected. The applicant is, therefore, before this Court.

2. Heard Mr. Jaju, learned counsel for the applicant and Mr. Natu, learned counsel for the respondent. Perused the impugned order.

3. The applicant is the accused in S.T.C. No.388/2006 filed by the respondent under Section 138 of the Negotiable Instruments Act. The applicant had filed an application Exh.242 before the trial Court and requested to send the cheque to the handwriting expert. It is his case that, he had issued a blank cheque to the power-of-attorney of the respondent. The application Exh.242 was rejected by the trial Court. The applicant, therefore, challenged the said order in Criminal Application No.3795/2015 before this Court. This Court, vide order dated 6/4/2016, set aside the order passed by the Magistrate and allowed the application Exh.242. Accordingly, the cheque was sent to the handwriting expert serving with the office of C.I.D., State of Maharashtra, Pune. The applicant then immediately preferred application Exh.273 and prayed for ascertainment of age of the signature and other matter appearing in the cheque. The said application was allowed.

4. The expert gave his opinion regarding the handwriting in the nature of signature and other matter appearing in the cheque. He, however, did not give any opinion as regards identity or otherwise of the figures appearing in the cheque. He also did not give opinion as regards age of the handwriting. The expert was examined as a witness. It is in his evidence that the figures appearing in the cheque can be examined and opinion thereon can be given. It is also in his evidence that, age of the questioned and admitted handwriting and other matter appearing in the cheque can also be ascertained. He, however, could not give his opinion for want of infrastructure in that regard. According to him, such technique is available in Central Forensic Laboratory, Kharadi, Pune.

5. Mr. Jaju, learned counsel for the applicant would submit that, the expert has not done his job as was directed by this Court and the learned Magistrate as well, vide order passed below Exhs.242 and 273. According to him, the trial Court ought not to have rejected the application Exh.322. He, therefore, urged for allowing the application.

6. Mr. Natu, learned counsel appearing for the respondent would, on the other hand, submit that, the applicant admits his signature on the cheque. The Apex Court, in case of **Bir Singh Vs. Mukesh Kumar** reported in **(2019) 4 SCC 197**, has held :-

“Section 139 – Raises presumption of law that cheque duly drawn was in discharge of debt or liability – However, presumption is rebuttable and onus lies on drawer to rebut it by adducing cogent evidence to the contrary – This presumption is not in conflict with human right of presumption of innocence of accused which prosecution is required to dislodge by proving its case against accused beyond reasonable doubt.”

7. According to learned counsel, the expert has given his opinion. The purpose for which the opinion of an expert was sought by the applicant gets fulfilled. The application has been filed with a view to delay the hearing of the case. He therefore, urged for rejection of the application.

8. Admittedly, the applications Exhs.242 and 273 moved by the applicant had been allowed. Opinion of the

expert was solicited as to admitted handwriting, questioned handwriting and figures appearing in the cheque. Age of the ink in which the matter had been written in the cheque was also solicited. The expert gave his opinion only in respect of the admitted signature and the questioned handwriting. As such, he did the incomplete job, only for the reason of want of availability of instruments in the Laboratory. It is true that the purpose for which the applications had been moved by the applicant might have been accomplished. The fact, however, remains that, the expert has not complied with the directions given by the Court in its entirety. There can be no dispute over the observations of the apex Court in Bir Singh's case (supra). The fact is, however, that the applications moved by the applicant had already been allowed, but the directions have not been complied with in their entirety. It is, therefore, desirable to send the cheque to the Central Forensic Laboratory, for examination by the expert and his report.

9. In view of the above, the present criminal application is allowed. The impugned order is set aside. The application Exh.322 is allowed. The trial Court shall issue a requisition and forward the cheque to the Central Forensic

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Science Laboratory, Kharadi, Pune and seek the opinion as has been asked for by the applicant.

10. The Director, Forensic Science Laboratory, Kharadi, Pune is expected to submit the report within a period of four months from the date of receipt of the requisition.

**(R. G. AVACHAT)
JUDGE**

fmp/-