

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2079 OF 2019

Rohini w/o. Uttamkumar Kamble,
Age 46 years, Occu. Household and
Proprietor of M/s. Asmita Gas Agency, Mukhed,
R/o. M/s. Asmita Gas Agency, Mukhed,
Taluka Mukhed, District Nanded.

.. Petitioner
(Original Accused)

Versus

Shilabai w/o. Babulal Bedarkar,
Age 64 years, Occu. Nil,
R/o. Mukhed, Taluka Mukhed,
District Nanded.

.. Respondent
(Original Complainant)

...
Advocate for Petitioner : Mr. Tukaram M. Venjane
Advocate for Respondent-sole : Mr. H. V. Patil
...

CORAM : N. R. BORKAR, J.

DATE : 13-10-2021

PER COURT :-

This petition takes an exception to the order dated 15-11-2019 passed by the learned Judicial Magistrate, First Class, Mukhed, below application Exhibit-79 in Summary Criminal Case No. 23 of 2013.

2. The petitioner, who is an accused in a complaint case filed by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, filed an application at Exhibit-79 for referring the cheque in question to the handwriting expert. The learned trial court rejected the said application at Exhibit-79 by the order impugned.

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

4. The learned counsel for the petitioner-accused submits that initially the application filed by the petitioner to refer the cheque in question to handwriting expert was allowed and the cheque in question was referred to the State Examiner of Documents, CID Maharashtra State, Aurangabad, for examination and opinion. It is submitted that the cheque was, however, returned back by the State CID on the ground that they do not have technology to determine the age of ink. It is submitted that thereafter another application was filed to send the cheque to the Central Forensic Laboratory, Kolkatta. The said application was rejected and therefore a petition was filed before this court. It is submitted that this court, by order dated 23rd August, 2017, in Criminal Writ Petition No. 683 of 2017, permitted the petitioner-

accused to file fresh application at appropriate stage i.e. stage after the accused is called upon to enter upon his defence. It is submitted that accordingly the application at Exhibit-79 was filed. It is submitted that the learned trial court, however, rejected the said application by taking erroneous view of the matter. It is submitted that considering the facts and circumstances, the order impugned needs to be set-aside and application at Exhibit-79 needs to be allowed.

5. In support of the submissions, learned counsel for petitioner-accused has referred and relied upon the decisions of the Apex Court in the case of – *(i) T. Nagappa Versus Y. R. Muralidhar*, reported in *(2008) 5 Supreme Court Cases 633* and *(ii) Kalyani Baskar (Mrs.) Versus M.S. Sampooram (Mrs.)* reported in *(2007) 2 Supreme Court Cases 258*.

6. On the other hand, learned counsel for respondent submits that the petitioner has not disputed the signature on the cheque in question. It is submitted that only defence of the petitioner is that the son of the respondent-complainant was working in the Gas Agency of the petitioner. According to the petitioner, she used to keep signed cheque in the office of Gas Agency to avoid any emergent financial difficulties. It is submitted that according to the petitioner the son of the respondent took

away the cheque in question and there is no transaction of whatsoever and respondent. It is submitted that the petitioner has, however, admitted in her cross-examination that on 14-07-2011, an amount of Rs.3,00,000/- was transferred in her bank account from the bank account of the respondent. It is submitted the trial Court was, therefore, justified in rejecting the application.

7. Admittedly, the petitioner has not disputed her signature on the cheque in question. The defence of the petitioner-accused is that she used to keep signed cheque, in the office of her Gas Agency. According to the petitioner, the son of the respondent, who was working in her Gas Agency took away the cheque in question. The petitioner has, however, admitted in her cross-examination that on 14-07-2011 an amount of Rs.3,00,000/- was transferred in her bank account from the bank account of the respondent. Considering the facts and circumstances, the trial court was justified in rejecting the application at Exhibit-79.

8. The judgment relied upon by the learned counsel for the petitioner would not apply to the facts of the present case as in the case of *Kalyani Baskar (Mrs.) (supra)*, the defence of accused therein was that she had not signed the cheque and not issued it to the complainant and in those circumstances the prayer

for sending the cheque for opinion of handwriting expert was allowed.

9. As regards the case of *T. Nagappa (supra)*, it was the case of determining the age of ink as it was the defense of the accused therein that cheque was issued in the year 1999 towards security for hand loan, which was paid back, but instead of returning the said cheque, it was presented for encashment in the year 2004.

10. No interference is, thus, called for in the order impugned in the writ jurisdiction. Accordingly, the writ petition stands dismissed.

(N. R. BORKAR)
JUDGE

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