

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2080 OF 2019

Uttamkumar s/o. Ramchandra Kamble,
Age 51 years, Occu. Service as Professor
R/o. Degloor Mahavidyalaya, Taluka Degloor,
District Nanded.

.. Petitioner
(Original Accused)

Versus

Satish s/o. Babulal Bedarkar,
Age 36 years, Occu. Business,
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-93 in Summary Criminal Case No. 33 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-93 for referring the cheque in question to the handwriting expert. The learned trial court rejected the said application at Exhibit-93 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, to determine the age of the ink and writing. 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. 682 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 defense. It is submitted that accordingly the application at Exhibit-93 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-93 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 respondent-complainant was working in the Gas Agency of the wife of the petitioner. According to the petitioner, he 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 respondent took away the cheques in question and there is no transaction between them of

whatsoever nature.

7. Admittedly, the petitioner has not disputed his signature on the cheque in question. The defence of the petitioner-accused is that he used to keep signed cheque in the office of Gas Agency of his wife and the petitioner-accused took away the said cheque. Similar defense is taken by the wife of the petitioner-accused in another matter filed by the mother of the respondent. *Prima facie* there appears to be no reason for the petitioner to keep signed cheque in the office of Gas Agency, of his wife. Considering the facts and circumstances, the trial court was justified in rejecting the application.

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

(N. R. BORKAR)
JUDGE

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