

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION 143 OF 2020

Prakash s/o.Rambhauji Warghane,
aged about 48 yrs, Occ.Business,
r/o. C/o.Dr. Dharne, Plot no. 146,
Kirti Nagar, Dighori, Nagpur

.....**PETITIONER**

...VERSUS...

Dinesh s/o. Mahadeorao Kolhe,
aged about 54 yrs, Occ. Business,
r/o. Plot no. 453, Anand Nagar,
Tiranga Square, Near Sangam Talkies,
Nagpur

... **RESPONDENT**

Mr. P. S. Khobragade, counsel for petitioner.
Ms. A.D. Kolhe, counsel for respondent.

CORAM: ROHIT B. DEO, J.
DATE : 22.01.2021

ORAL JUDGMENT:

Heard Mr. P. S. Khobragade, the learned counsel for the petitioner and Ms. A.D. Kolhe, the learned counsel for the respondent.

2. The petitioner is the accused in the complaint instituted under section 138 of the Negotiable Instruments Act.

3. The complainant examined himself and three

witnesses and closed the evidence on 1.10.2019.

4. Petitioner – accused stepped into the witness box on 15.10.2019. In response to a question in the cross-examination, the accused denied his signature on the disputed cheque. On the next date of hearing, the complainant preferred an application Exh. 88 seeking appointment of handwriting expert for examining the handwriting on the disputed cheque Exh. 43.

5. The learned Magistrate rejected the application vide order dated 21.11.2019 on the premise that the application is moved belatedly. A factually incorrect observation is made by the Magistrate that the application is moved after the completion of the evidence of the accused. As noted supra, the application was moved on 18.10.2019 and the evidence of the defence was ongoing.

6. The complainant approached the revisional Court which allowed the revision observing that the learned Magistrate committed a factual error in assuming that the application was moved belatedly.

7. The learned counsel for the petitioner, has twin submission to canvas. The first submission is that the revision was not maintainable, since the order of rejection of application Exh. 88 is an interlocutory order and the bar envisaged by section 397(2) comes into play. Second submission is that on merits, no case is made out seeking appointment of handwriting expert, since the application was moved belatedly.

8. The learned counsel for the complainant invites my attention to several decisions including the decision ***Madhu Limaye..vs.. The State of Maharashtra, (1977)4 SCC 551*** explaining term “interlocutory order”. The submission is that an order rejecting appointment of handwriting expert may not be a final order, however, the order certainly is not interlocutory and would fall in the “intermediate” category, since the order has serious implications for the complainant and his chances in the litigation. The submission of the learned counsel that revision was maintainable is prima facie appealing. However, since it is noticed that such objection was not raised in the revisional Court, and the accused merrily permitted the revisional Court not only to entertain the revision, but to decide the same on merits, I refrain

from making any decisive observation on the tenability of the revision.

9. Suffice it to state, that the order impugned does no disservice either to the complainant or to defence. As a matter of fact, the accused having denied his signature, ordinarily ought to well come an handwriting expert's opinion. Be that as it may, no case is made out for interference in writ jurisdiction.

10. The application is dismissed.

Judge