

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.763 OF 2022

PRAMOD S/O BALKISAN MANTRI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

....
Advocate for Petitioner : Mr. N. E. Deshmukh
APP for Respondent No.1-State : Mr. S. P. Deshmukh
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-06-2022

ORDER :

1. Not on board, taken on board immediately after the precipe is produced.
2. Heard learned Advocate Mr. N. E. Deshmukh for petitioner and learned APP Mr. S. P. Deshmukh for respondent No.1-State. It is not even necessary to issue notice to respondent No.2.
3. The present petitioner is the original complainant who has filed private complaint bearing SCC No.2216 of 2018 against the present respondent No.2 for the offence punishable under Section 499, 500, 501 of IPC. The learned Magistrate, 9th Court, Jalgaon has issued process against respondent No.2/ original accused by order dated 05-11-2019 and the said order is under challenge in Criminal Revision

Application No.44 of 2021 before the learned Additional Sessions Judge.

4. The fact giving rise to the present writ petition are that the present applicant after his appearance in the criminal revision application filed an application at Exhibit 6 under Section 73 of the Indian Evidence Act. It was contended that the criminal revision petition has not been filed by Parag Vyankatraman Prabhu but it is signed by some different person as the signatures on the petition are totally different from the signatures those are appearing on the documents filed at Serial No.5 and 6 of the list of documents filed by the petitioner along with the petition. It was contended that those signatures can also be compared with the record and proceedings in SCC No.2216 of 2018 pending before the learned Magistrate. Therefore, it was prayed that the petitioner be called in presence of the Court and his specimen signatures be obtained and then it is stated that those documents be sent along with the admitted documents to the handwriting expert for its comparison and opinion.

5. Say has been given by the present respondent No.2/revision applicant in the criminal revision denying that there are two different signatures. He identifies his signature and it is not at all necessary

that it should be sent for comparison. Thereafter, it appears that once again another affidavit has been produced on behalf of the present respondent No.2 that since 2008 he is adopting two different patterns of signatures for operating various bank accounts and other facilities of the company being an authorized signatory and he has annexed the PAN Card and other documents to prove that he is adopting two different patterns of signature. He has stated that the revision bears his signature.

6. After hearing both sides, the learned Additional Sessions Judge, Jalgaon rejected the application on 20-04-2022 and that is the order under challenge in this writ petition.

7. It can be seen from the clear implication of "*for the purpose of enabling the Court to compare*" in the 2nd paragraph of Section 73 of the Indian Evidence Act that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of enabling the Court to compare and not for the purpose of enabling the investigation or other agency to compare. The present application is specifically stated to be under Section 73 of the Indian Evidence Act and not under Section 45 of the Indian

Evidence Act. Section 45 of the Indian Evidence Act provides that ,
"when the Court has to form an opinion upon a point of foreign law, or of science or of art, or as to identity of handwriting or finger impressions, the opinions upon the point persons specially skilled in such foreign law, science or art, or in questions as identity of handwriting or finger impressions are relevant facts." Even if we consider that mentioning of wrong provision or non mentioning of Section 45 or even Section 47 should not be technically viewed, yet the fact remains that the question of calling respondent No.2 before the Court and taking his specimen signature would arise only when that person is disputing the signature. Merely because there is some difference in the signature that it is not mean that the other party will get a right to dispute that. Here, respondent No.2 has challenged the order of issuing process against him before the competent authority and in the say that person is admitting that it is his own signature. The present petitioner cannot directly pray for getting the specimen signatures of respondent No.2 as he is not coming with a case that respondent No.2 is in any way playing fraud with the Court. A revision petition in fact need not even be signed by the client, it can be signed by the Advocate representing the said client, but as per the procedure supporting affidavit or verification by

the party would be necessary. That does not mean that there is any fraud upon the Court or it gives a rights to the question of comparison of the signatures by the Court himself. Reliance can be placed on *Ravindra Vs. Laxman*, reported in 2008 (4) Mah LJ 208, wherein this Court has taken a view that :-

“Though Section 73 of the Indian Evidence Act enables the Court to compare the disputed and admitted signatures itself unaided by expert, however, it cannot be unsafe and hazardous to make such comparison without the aid of the scientific opinion of the expert.”

In *Bharathan Vs. Sudhakaran*, reported in 1996 SC 1140, it has been held that :-

“Even if there were to be any difference in the signature, it is not for the Court to examine same. The Court should not undertake the hazardous task of comparing the disputed signatures for setting aside the proceedings and it is within the province of an expert after scientific comparison of the disputed signature with the admitted signature.”

Here, respondent No.2 is in fact admitting that they are his own signatures, therefore, when no sufficient ground is made available and merely because the complainant wants to dispute those signatures, he cannot be allowed to use the powers of the Court

under Section 73 of the Indian Evidence Act.

8. There is no error or illegality committed by the learned Additional Sessions Judge while rejecting application Exhibit 6. There is no such circumstances which requires this Court to exercise its constitutional powers under Article 226 and/or under Article 227 of the Constitution of India. Hence, the writ petition stands dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.