

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1244 OF 2021

Mr. Govind Gambhirrao Khambote,
Age-67 years, Occu:Retired,
R/o-Plot No.13, Flat No.3/C-5,
Town Center, CIDCO N-1, Aurangabad,
Tq-Aurangabad, Dist-Aurangabad

...PETITIONER

VERSUS

Mr. Mukesh Rajesh Bhatt,
Age-34 years, Occu:Business,
R/o-B. No.4, Plot No.255 to 259,
North 1, Sector-B, CIDCO,
Aurangabad.

...RESPONDENT

...
Mr.Abhinay D. Khot Advocate for Petitioner.
None present for Respondent.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 23rd JUNE, 2022

ORDER :

1. By this Writ Petition, the original accused want to invoke the constitutional powers of this Court under Article 227 of the Constitution of India to challenge the order dated 17th March 2021 passed by learned Judicial Magistrate First Class,

Aurangabad below Exhibit-43 in Summary Criminal Case No.793 of 2018.

2. Heard Mr. Khot, learned Advocate for the petitioner. Notice of admission appears to have been issued to the respondent but he remained absent. Then on 21st March 2022 notice of final hearing was also given to the respondent and it was also served, still he remained absent and therefore, the submissions only on behalf of the petitioner are heard.

3. The facts giving rise to the present petition are that the present petitioner is original accused in said Summary Criminal Case filed by the respondent under Section 138 of the Negotiable Instruments Act. At Exhibit-43 the present petitioner had filed an application for referring the disputed cheque to handwriting expert's opinion. Say from the complainant was called and after hearing both the sides, the learned Magistrate has rejected the said application. The said order is under challenge here.

4. It will not be out of place to mention here that according to the complainant the disputed cheque was given on 30-08-2017, whereas it was suggested by the accused – present petitioner that he had given the said cheque on 30-06-2017 and the

complainant has manipulated the date to "8" from letter "6". In order to get the confirmation about that correction / interpolation, petitioner filed the said application Exhibit-43.

5. It is to be noted from the impugned order passed by the learned Magistrate that the accused – present petitioner has cross-examined the complainant and had given a suggestion that he had issued the disputed cheque on 30-06-2017, of course which would have been denied. Thereafter, after the closure of the evidence on the part of the complainant, the statement of the accused has been recorded under Section 313 of the Code of Criminal Procedure. Till the matter was heard for application Exhibit-43, the accused – petitioner had not produced any documentary evidence to support his contention that in fact he had issued the said cheque on 30-06-2017, though it was contended before the learned Magistrate that the accused is having counterfoil of the said cheque. Photocopy of that counterfoil was directed to be produced by this Court by the earlier order and accordingly a photocopy has been produced. This Court, in its writ jurisdiction, cannot go into the disputed facts. But the question remains that when the accused was possessing any document in support of his contentions, then why he has not produced it at the appropriate stage. When that

document is with him and still he can enter the witness box to support his defence that he had issued that cheque on a particular date, there is no question of sending the said cheque for the opinion of the handwriting expert. Handwriting expert's opinion is not a conclusive evidence. It is always supportive or corroborative in nature to establish a contrary fact. In each and every case under Section 138 of the Negotiable Instruments Act if the accused persons would take such kind of defence, then the major part of the litigation in this Country would come to a stand still. Only after it is shown that it is utmost necessary to refer the particular disputed document to handwriting expert, then only that power can be used by any Court of law and it cannot be merely by asking any party. The judicial discretion has been correctly applied by the learned Magistrate while rejecting the said application. No case is made out for exercise of constitutional powers of this Court in this Petition and the Writ Petition deserves to be rejected.

6. Accordingly, the Writ Petition stands rejected.

[SMT. VIBHA KANKANWADI , J.]