

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

943 CRIMINAL WRIT PETITION NO.1344 OF 2021

**DNYANESHWAR KASHINATH KOLTE
VERSUS
DEOGIRI NAGARI SAHAKARI PAT SANSTHA LTD. THROUGH,
ITS AUTHORIZED OFFICER, ANIL KACHRU SULTANE**

Mr. Ravindra Vitthal Gore, Advocate for the petitioner
Mr. S. A. Gaikwad, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 14th DECEMBER, 2022

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1. Heard learned advocate for the parties. The matter is taken up for final hearing at the stage of admission.

2. The order passed by the learned JMFC dated 07-09-2021 rejecting the application of the accused in SCC No. 7564/2016 is subject matter. By the impugned order the learned JMFC was pleased to reject an application filed by the accused-petitioner for sending cheque in question for experts opinion to prove the age of the ink on the cheque. It is his case that the complainant has fraudulently wrote his name along with

amount and date when the cheque issued towards security in the year 2015. It is seen that he has produced on record the communication dated 21-08-2015 issued by the complainant-respondent wherein three cheques are referred, out of which one bearing No. 654525 is now presented and complaint is filed. Thus, it is the his case that the cheques were already issued and one of the cheques is now misused by the society and to bring on record, the cheque sent to expert's opinion.

3. Learned JMFC while rejecting an application observed that the complainant has filed his examination-in-chief on 11-05-2017 and is not yet concluded. The accused is only prolonging the matter and is avoiding to cross-examine the complainant. Further it is observed that merely because of the cheque is exhibited will not automatically prove the contents of the cheques. It is not the stage where the cheque need to be sent for handwriting expert's report, as the evidence of complainant is still in progress and it is not tern of the defence to prove his defence and rejected the application.

4. Learned advocate for the petitioner submits that the petitioner would suffer great prejudice if the cheque is not sent for expert's opinion. He produced on record the judgment delivered by this court at Nagpur Bench in Criminal Writ Petition No.515/2018 in which it is held that objection to the documents be raised at the first available opportunity, if the document is marked as exhibit, it has serious implications in such cases and the respondent can avail of other modes of proving that cheque in question was indeed dishonoured by examining concerned bank official or placing on record certificate under Section 65-B of the Indian Evidence Act, 1872, regarding memo in question. Learned advocate for the respondent submits, that was a case to prove the bank memo issued by the bank, whereas in this case, it is cheque wherein signature is admitted and only question is about age of the ink which needs not to go into at this stage.

5. Learned advocate for the petitioner further relied upon the judgment reported in 2008 AIR (SC) 2010 in the case

of T. Nagappa Vs Y. R. Muralidhar. This court held that said judgment is of no help to the petitioner. In the said judgment the Hon'ble Apex Court has held that it is not necessary to have any expert opinion on the question except question quoted in the application that whether writing appearing on the said cheque on the front page is written on the same day and time when the said cheque was signed as well as on the reverse.

6. In this case, it is clearly seen that cheque was given in 2015 and from the communication by the society itself. In such view this court finds that the learned trial court has rightly passed the order and no illegality is found in the said order. Hence, the petition is devoid of merits. The petitioner is always at liberty to make his prayer at the appropriate time. Hence, there is no merit in the criminal writ petition and stands dismissed and disposed off.

[KISHORE C. SANT, J.]