

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

CRIMINAL WRIT PETITION NO.1531 OF 2021

Vasant Laxman Sonawane ... **PETITIONER**

VERSUS

Sangita Arjun Sonawane & anr. ... **RESPONDENTS**

.....
Mr. A.K. Gawali, Advocate for petitioner
Mr. R.S. Kasar, Advocate for respondent No.1.
Mr. S.P. Sonpawale, A.P.P. for the respondent No.2 – State
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CORAM : R. G. AVACHAT, J.

Date of reserving order : 11th March 2022

Date of pronouncing order : 21st March 2022

ORDER :

Heard learned counsel for the parties. The challenge in this writ petition is to the order dated 20/1/2020, passed by Additional Chief Judicial Magistrate, Ahmednagar on application Exh.47 in S.C.C. No.2292/2018 and the order dated 8/11/2021, passed by Sessions Judge, Ahmednagar in Criminal Revision No.12/2020. Vide orders impugned herein, a prayer of the petitioner (accused) in Summary Criminal Case (S.C.C.) No.2292/2018 for referring to the handwriting expert the acknowledgment receipt (Exh.23) for its

examination and report was turned down.

2. It is a case under Section 138 of the Negotiable Instruments Act. The petitioner herein is an accused therein. The complaint has been filed by wife of his real brother, alleging to have paid the petitioner time to time a sum of Rs.21,00,000/-. Towards repayment of the said amount, the petitioner is said to have had issued the cheque and also executed an acknowledgment receipt (Exh.23).

3. The learned counsel for the petitioner would submit that, in reply to the statutory demand notice, the petitioner has denied to have had issued the cheque in favour of the respondent/ complainant and even executed the acknowledgment receipt (Exh.23). In the lengthy cross-examination of the complainant, she was put specific questions about the document (Exh.23). According to her, it is in the handwriting of either petitioner or his son. The complainant also examined her husband as a witness who testified that the document (Exh.23) is in handwriting of his wife (complainant). It was also suggested to him that the said document was forged and fabricated. The learned counsel would further submit that, the petitioner examined his

son in his defence. He denied to have signed the acknowledgment receipt (Exh.23) as a witness. He also denied that the document is in his handwriting. In the given facts and circumstances, the petitioner had moved an application to refer the document (Exh.23) to the handwriting expert to find whether his son had really attested the document as a witness and the contents thereof are in his handwriting. According to learned counsel, the trial Court ignored the fact of the petitioner to have denied execution of the acknowledgment receipt. According to him, both the courts below have erred in rejecting the application. According to him, the petitioner being an accused, ought to have been given a fair opportunity to meet the charge levelled against him. The learned counsel has placed reliance on the Apex Court judgment in case of Kalyani Baskar (Mrs.) Vs. M.S. Sampooram (Mrs.), reported in (2007) 2 SCC 258. He, therefore, ultimately urged for allowing the petition.

4. The learned counsel for the respondent No.1/ complainant would support the orders impugned herein. He would submit that, the petitioner has not denied the signature on (Exh.23). According to him, application was moved only with a view to delay the hearing of the case.

5. It is a case under Section 138 of the Negotiable Instruments Act. The petitioner admitted his signature in the cheque. Only with a view to avoid the trial Court being influenced by the observations of this Court, I do not propose to refer to the defence with which the petitioner has come, admitting his signature in the cheque.

6. The respondent – complainant has also come with a case that the petitioner executed an acknowledgment receipt (Exh.23). The said fact has been averred in the complaint and even reiterated in the statutory demand notice. The petitioner, in reply to the demand notice, denied to have issued a cheque in favour of the complainant and even disputed execution of acknowledgment receipt (Exh.23). The complainant in her oral evidence had referred to the document (Exh.23). The said document is said to have been executed by her and the petitioner as well besides three attesting witnesses, one of whom is the husband of the complainant and the other one to be petitioner's son.

7. True, the complainant in her oral evidence stated that acknowledgment receipt might have been written either

by the petitioner or his son. While complainant's husband testified the acknowledgment receipt to have been in the handwriting of the petitioner himself. It is also the case of the complainant that the petitioner's son Kaustubh has signed the acknowledgment (Exh.23) as an attesting witness. Kaustubh was examined as a defence witness. He denied to have ever scribed (Exh.23) or signed it as an attesting witness. In these circumstances, the application to refer (Exh.23) to handwriting expert was moved by the petitioner.

8. There can be no two views over what has been observed by the Apex Court in case of Kalyani Baskar (*supra*). In paragraph No.12 of the judgment, the Apex Court has observed.

“12. Section 243 (2) is clear that a Magistrate holding an inquiry under Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon

for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque in question, for the opinion of the handwriting expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.”

9. The facts in Kalyani Baskar’s case (supra) indicate that the accused therein had denied his signature in the

cheque and, therefore, the cheque was sought to be referred to a handwriting expert for its examination and opinion. In the case in hand, the petitioner admitted the cheque to have been under his signature. The acknowledgment receipt (Exh.23) was sought to be referred to the handwriting expert for its examination, only to ascertain whether it bears signature of the petitioner's son as an attesting witness or the contents therein are in his (son's) handwriting. The complainant has specifically deposed that the handwriting (Exh.23) might be that of the petitioner or his son. The question is whether the petitioner had executed that acknowledgment receipt. Although he has denied its execution, he did not seek it to be referred to handwriting expert so as to compare his admitted signature in the cheque with that on his alleged signature as an executant of the acknowledgment receipt (Exh.23). Had the petitioner urged for the said document to be examined by the handwriting expert so as to ascertain whether the signature appearing therein as an executant is that of his, this Court would have allowed the petition, but for want of such prayer.

10. In the given facts and circumstances, this Court finds both the courts below to have been justified in rejecting

the application (Exh.47). No interference with the impugned order is thus warranted. The Criminal Writ Petition, therefore, fails. It is dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-