

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1570 OF 2019

Shatrughna Damodar Kondubhairi ...Petitioner

Versus

Digambar Dagdu Bhagare and another ...Respondents

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Mr. Sarang S. Aradhye, Advocate for the Petitioner.

Mr. Shriram S. Chaudhari, Advocate for Respondent No.1.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th AUGUST 2022

PC :

1. The Petitioner is tried for an offence punishable under Section 138 of Negotiable Instruments Act, 1881 vide Criminal Complaint bearing STC No. 15 of 2018 pending before the Court of Judicial Magistrate, First Class, Mangalwedha, District Solapur. The respondent No.1 is the complainant.

2. The complainant has alleged that, accused had borrowed hand loan of Rs.4,00,000/- (Rupees four lakhs) from the complainant for purchasing vehicle. In the past, accused had borrowed amount from the complainant and it was returned to him. Accused is the friend of

complainant. Hence, the complainant parted an amount of Rs.4,00,000/- to the accused. Towards the repayment, accused returned the amount of Rs.50,000/- by cash and Rs.3,50,000/- vide cheque No.0306133 dated 10th October 2017. The cheque was deposited by complainant with his bank and it was dishonoured on 16th November 2017 with remark "Funds Insufficient". The complainant sent a legal notice through his Advocate to the accused for returning the amount of cheque. Since, the amount was not returned, complaint was filed before the Court of JMFC, Mangalwedha on 10th January 2018.

3. Pursuant to issuance of process, the complainant filed affidavit of evidence. The complainant was cross-examined at the instance of Advocate for the accused on 19th November 2018 and 5th December 2018. The statement of accused was recorded under Section 313 of Cr.P.C. on 28th December 2018. The accused/Petitioner filed an application Exhibit-46 on 9th January 2019 for forwarding his handwriting signature on statement of accused and cheque and name of complainant, amount written in letters and figures to determine age of ink. Signature of accused on statement and cheque, name of complainant, amount written in figures and letters to determine whether it is in handwriting of accused. The said application was rejected by trial Court vide order dated 18th January

2019. While rejecting the application it was observed that, accused has cross examined complainant and in his defence raised plea that, signature over the disputed cheque is not of him and he had never written contents of the disputed cheque and cheque was misused by complainant. Accused in his statement stated that, he wants to adduce his evidence on oath before the court by entering into witness box and without adducing evidence filed the said application. Although, the accused in his defense and statement denied signature over the disputed cheque, but he has never put up any specific defense how his cheque was in custody of complainant. The accused has opportunity to adduce his evidence on oath about the custody of disputed cheque. The accused has not entered into witness box and had not given any plausible explanation in his defense about complainant's custody over the disputed cheque. Accused has not put up any suggestions to the complainant, as to how his cheque was in custody of complainant. Mere plea raised by accused in his defense that signature over the cheque is not put up by him and contents of cheque are not written by him, are not sufficient to conclude at this stage that, it is signed and written by anyone else other than the accused. Accused had deliberately avoided to enter into witness box. He is trying to make up new defense by signing his statement with different signature, as he has

put up another on his *vakalatnama*. His acts shows that he is trying to prolong the matter unnecessarily without any justifiable reason. The learned Magistrate than referred to section 20 of the Negotiable Instruments Act and observed that, the complainant is holder in due course of disputed cheque. He presented cheque from his lawful custody. His custody over the cheque is not denied by the accused. However, accused has failed to give plausible explanation about the complainant's custody over the disputed cheque. In these circumstances, it would not be just and proper to call the expert opinion as claimed by the accused. The Court than referred to decisions relied upon by accused in the case of T.Nagappa Vs. Y. R. Mulidhar AIR 2008 SC 2010 and Mrs. Kalyani Baskar Vs. Mrs. M. S. Sarpoornam 2007 (2) SCC 258. The trial Court than observed that accused has not complied provisions of Section 243 (1) of the Cr.PC. and filed application under Section 243(2) of Cr.PC. for obtaining expert opinion. All these aspects show that, accused has filed the application with malafide intention to prolong the matter. There is prima facie presumption in favour of complainant that he is holder in due course of the disputed cheque and accused has authorised him to fill up blanks of disputed cheque. Accused has not come up with clean hands before Court. He has not entered into witness box and not denied signature over the disputed cheque. The application is

vexatious and filed only with intent to delay the proceedings.

4. The Petitioner/accused filed affidavit of defence evidence on 21st January 2019. He was cross-examined at the instance of complainant. Thereafter, the Petitioner preferred another application vide Exhibit-56 on 22nd February 2019 seeking similar directions to forward the cheque to handwriting expert opinion.

5. Learned Magistrate vide order dated 13th March 2019 rejected the said application. While rejecting the said application it was observed that, the accused has adduced oral evidence and denied signature over the cheque. He also denied the contents over the cheque being written by him and claimed that cheque is misused by complainant. Similar application preferred by accused vide Exhibit-46 was rejected by Court by giving specific finding about his conduct. At the time of filing application exhibit-46, accused has not entered into witness box and not adduced evidence on oath. After rejection of previous application he has adduced his oral evidence. Through, his oral evidence, he has denied signature over the disputed cheque and contents of cheque. According to accused, there is change in circumstance. However, as discussed in order passed below exhibit-46 it appears that, accused has filed application only with intent to prolong the matter. It was also held that, accused has failed to explain about the custody of complainant over the cheque and

accused is trying to make up new defense by signing his statement in different manner, as he has put up another signature on his *vakalatnama*. It was also held that, complainant is holder in due course of disputed cheque in view of section 20 of the Negotiable Instruments Act and accused has failed to give plausible explanation about complainant custody over the disputed passed below exhibit-46 shows that those are not only in respect of accused has not adduced his evidence on oath but about conduct of the accused, complainant's custody over disputed cheque and defense raised by the accused, while cross-examining complainant. The present application of the accused is nothing but an false attempt made by him to fill up lacuna in his defense and to prolong the matter. Mere adducing oral evidence by accused after rejection of his first application cannot amount to charge in circumstances. The accused is attempting to prolong the matter. Considering complainants case, there is prima facie presumption in favour of complainant that he is holder in due course of the disputed cheque, and accused authorised him to fill up blanks of cheque. The accused has not come up with clean hands. The application filed by accused is not bonafide and it is vexatious. Mere denial of signature and handwriting of contents over the cheque cannot be sufficient ground to send the cheque for expert opinion in absence of plausible explanation about

complainant's custody over the cheque.

6. By preferring this petition, the Petitioner has challenged the Orders dated 18th January 2019 and 13th March 2019 passed by learned JMFC, Mangalwedha rejecting petitioner's applications below Exhibits-46 and 56.

7. Learned Advocate Mr. Aradhye submitted that, the impugned orders are contrary to law. The learned Magistrate has failed to consider the grounds on which the previous application was rejected by the Court vide Order dated 18th January 2019. While rejecting the previous application it was observed that, since the evidence of accused was not adduced, the application is not maintainable. The Petitioner adduced the evidence and preferred second application for reference of the subject cheque to handwriting expert opinion which is also erroneously rejected by learned Magistrate. In the application below exhibits-46 and 56, the Petitioner had specifically stated that, cheque in question has been misused by Respondent No.1 and signature as well as other contents of the cheque are not made by the Petitioner. The said fact has been deposed by Petitioner in his statement under Section 313 of Cr.P.C. and also in his defense evidence by examining himself as witness. Instead of referring the cheque to the handwriting expert, the applications were rejected on flimsy grounds. The specific defence of the Petitioner was related to

authenticity of the contents of cheque and signature of the drawer which was denied by him. In the interest of justice and fair trial, the Court should have forwarded document for handwriting expert opinion. The complainant was cross-examined by the Advocate for Petitioner/accused. The case put up at the instance of Petitioner that, the cheque is not signed by Petitioner. The Petitioner had purchased the motorcycle from complainant. Blank cheque was handed over to the complainant. It was not signed by Petitioner/accused. The name of complainant and amount was not written by him on the cheque. The petitioner cannot be deprived of opportunity to rebut the presumption. The cheque was not returned to the accused. It was misused by complainant.

8. Learned Advocate for Petitioner has relied upon the following decisions:-

- (i) Kalyani Baskar (Mrs.) Vs. M.S. Sampooram (Mrs.)¹,
- (ii) T. Nagappa Vs. Y. R. Murlidhar²;
- (iii) G. Someshwar Rao Vs. Samineni Nageshwar Rao³
- (iv) Nandkumar Rajkumar Harane Vs. Vishawas Vilasrao Kshirsagar and Anr.⁴

9. Learned Advocate for Respondent No.1 submitted that, there is no infirmity in the orders dated 18th January 2019 and 13th

1 2007 (2) SCC 258

2 AIR 2008 (SC) 2010

3 AIR 2009 (SC) 2050

4 2012 (2) MH.LJ 388

March 2019 passed by the learned JMFC, Mangalwedha, District Solapur. The accused have urged false defence. The sole intention of the accused is to delay the proceedings. Simplicitor denial of the signature is not sufficient to send the cheque to the handwriting expert opinion. The Court has assigned reasons for rejecting the application preferred by Petitioner. The accused had put up different signature on statement under Section 313 of Cr.P.C. and vakalatnama. The trial Court is also empowered to compare signatures by exercising powers under Section 73 of Indian Evidence Act. There is *prima facie* presumption in favour of the complainant that, he is holder in due course of the disputed cheque and accused has authorized him to fill up blank of the disputed cheque. The application is not bonafide. The presumption under Section 20 of the Negotiable Instruments Act is in favour of complainant. The petition may be dismissed.

10. Learned Advocate for Respondent No.1 has relied upon the decision of this Court in the case of *K. S. Satyanarayana Vs. V. R. Narayan Rao (1999) 6 SCC 104*; *Shri Prakash Sevantilal Vora Vs. The State of Maharashtra and Anr. 2011 Cri. J. 2207*; *Prakash Mundada Vs. Deepak Athlani and Anr.* decided by this Court on 8th April 2019 in Criminal Writ Petition Nos. 1033 of 2019 and 1034 of 2019.

11. The complaint is under Section 138 of the Negotiable Instruments Act. The complainant has alleged that, loan of Rs. 4,00,000/- was advanced to the accused. The cheque of Rs.3,50,000/- was issued by accused in favour of complainant. The defence of the accused is that, the accused has not signed the cheque. It's contents were not filled up by him. Blank cheque was handed over to the accused in respect to transactions relating to purchase of vehicle. It is pertinent to note that, the cheque was dishonored on account of 'Insufficient Fund' and not on account of variation in signature.

12. Section 139 of Negotiable Instruments Act refers to presumption in favour of holder. Section 118 relates to presumption as to Negotiable Instruments Act. Section 20 refers to inchoate stamped instruments. As per Section 20 of the Act where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in (India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he

signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

13. The first application preferred by Petitioner seeking handwriting expert opinion regarding cheque was rejected by the learned Magistrate by order dated 18th January 2019. At that point of time the complainant had filed affidavit of evidence and he was cross-examined by Advocate for accused. The suggestion put up to the complainant merely refers to the fact that accused had not signed the cheque and that complainant has not parted any amount to the accused and thus accused does not owe any amount to complainant. As far as contents of disputed cheque the question put up to complainant is that the contents of cheque were not written by accused in presence of complainant. The answer given by complainant is that, the accused had brought the filled up cheque and it was signed in presence of complainant. It was not his defense that blank cheque was in custody of complainant and it was misused by him by writing its contents and signing it. In this context the trial Court in the first order dated 18th January 2019 had observed that the accused has never put up any specific defense, how the cheque was in custody of complainant. He had never put up any suggestion

to the complainant as to how his cheque was in custody of complainant. It was also observed that the accused has not adduced evidence on oath under Section 243(1) of Cr.PC. However, it was also observed that accused is trying to make up defense by signing his statement with different signature and he had put up another signature on his vakalatnama. He has not come with clean hands and trying to prolong the matter. Thereafter, the accused examined himself by filing his affidavit of examination in chief on 21st January 2019. In the evidence the accused pleaded that blank cheque without contents and signature was handed over to complainant as balance amount of Rs.10,000/- towards purchase of motorcycle were due to be paid to complainant. The amount was paid by him but the cheque was not returned. It was misused. He denied writing and signature on cheque. Thus pursuant to order dated 18th January 2019 the accused had come up with aforesaid defense. The accused has been cross-examined by complainant's Advocate in respect to defense raised by him. Since the trial is pending it is not advisable to adjudicate on the defense of accused in depth. Considering the factual aspects and the observations in order dated 18th January 2019, the learned Magistrate for the reasons stated herein above had rejected second application preferred by petitioner vide order dated 13th March 2019. There is no infirmity in both the orders passed by

the Court below.

14. In the case of *Kalyani Baskar* (supra) the apex Court dealt with question with regard to the scope of the powers of the Magistrate under Section 243 of the Code of Criminal Procedure, 1973. The facts of that case indicate that during trial, the banker of the appellant during cross-examination deposed that he has not verified the signature before returning the cheque in question as dishonoured. The appellant preferred an application under Section 243 of Cr.P.C. requesting the Magistrate to send the cheque in question for expert opinion to ascertain the correctness and genuineness of the appellants signature appearing thereon. The Magistrate dismissed the application. The High Court of Judicature at Madras also dismissed the Revision Application. The apex Court noted that at the initial stage the appellant filed an application under section 245 Cr.P.C. and denied her signature on the cheque and its delivery to the respondent. The said application was dismissed on the ground that, the genuineness of the signature can be questioned only at the time of trial. The apex Court than referred to provisions of section 243 Cr.P.C. which relates to Evidence for defense. Analysing the said provisions it was observed that 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 his 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 respondent and if the cheque on which 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 is entitled for fair trial. Section 243(2) Cr.P.C. refers to the stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defense. The appellants requests for sending the cheque in question, for the opinion of the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. The apex Court set aside orders passed by Courts below and directed to allow the application of appellant/accused. In the present case, the trial Court while rejecting the first application preferred by petitioner, has noted that petitioner is trying to make up new defense

by signing his statement with different signature, as he has put up another signature on his vakalatnama. His acts shows that he is trying to prolong the matter without justifiable reason. Accused has not come with clean hands. While rejecting the second application, the trial Court has observed that the application is filed with an attempt to fill up lacuna and to prolong the matter. Mere adducing oral evidence after rejecting of first application cannot amount to change in circumstances. Mere denial of signature and handwriting of contents over the cheque cannot be sufficient ground to send the disputed cheque for experts opinion in absence of plausible explanation about complainant's custody over the disputed cheque. The application is vexatious and filed only with intent to delay the proceedings. Applying the principle laid down in aforesaid decision, the order passed by trial Court cannot be faulted. The facts of *Kalyani Baskar's* case also indicate that the accused had preferred application under Section 245 of Cr.P.C. and thereafter under Section 243 of Cr.P.C. Both the provisions are covered by chapter XIX of Cr.P.C. dealing with trial of warrant cases by Magistrates. The accused was tried for the offence under Section 138 of Negotiable Instruments Act. As per Section 143 of the Negotiable Instruments Act all offences under the chapter shall be tried as per the provisions of Section 262 to 265 of the Code as far as may be apply to such

trials. The second proviso to the said provision provides that when at the commencement of or in the course of summary trial under this section, it appears to the court the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter proceed to hear/ re-hear the case in manner provided by the said code. Section 262 to 265 Cr.P.C. are covered by chapter XXI relating to summary trial. Considering the sentence of imprisonment provided to the offence under Section 138 of N.I. Act the case would fall under category of 'summons trial'. Chapter XX of the code relates to trial of summons cases by Magistrates covered by section 251 to 259 of Cr.P.C. In the case of Kalyani Baskar (supra) the trial Court and High Court did not consider the issue about preferring the application under Section 245 and 243 of the Code in summons case or summary trial. The said issue was not urged before Hon'ble Supreme Court.

15. In the case of *T. Nagappa Vs. Y. R. Murlidhar* (supra) the appellant was facing criminal charges under section 138 of the N.I. Act. The appellant filed an application under Section 243 of the Code of Criminal Procedure for referring the cheque for examination by Forensic Science Laboratory for determining the age of his

signature, contending that the respondent had obtained a signed cheque from him in the year 1999 as a security for a hand loan, which had been paid back, but instead of returning the cheque, the same has been misused by entering a huge amount, which he did not owe to the appellant. The application was rejected by trial Court. The revision application was dismissed by High Court. Both the courts had relied upon section 20 of the N.I. Act. The Main contention of the appellant accused was that cheque was signed in the year 1999 and writing appearing on on the cheque has been filed up in the month of August, October and December 2004. Thus the signed cheque of accused is misused by complainant by filing the contents after five years. The Supreme Court has observed that when a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. Accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the constitution of India. The right to defend and adduce evidence is recognised by Parliament in terms of section 243 (2) of Cr.P.C. ordinarily an accused should be allowed to approach the Court for obtaining its assistance with regard to summoning of witnesses etc.

There cannot be any doubt whatsoever, that the accused should not be allowed to unnecessarily protracting the trial. Reference was made to decision in the case of *Kalyani Baskar* (supra). As stated above the trial Court in the present case has assigned reasons for rejecting applications which includes intent to prolong the proceedings.

16. In the case of *G. Someshwar Rao Vs. Samineni Nageshwar Rao* (supra), the appellant was tried for an offence under Section 138 of the Negotiable Instruments Act on the premise that the appellant had executed one pronote on 21st October 2002 for Rs. 5 lakhs. He issued cheque on 25th October 2004 for Rs. 6 lakhs in favour of respondent. It was dishonoured. The appellant contended that the pronote and cheque were forged and fabricated. He denied execution of cheque. He filed application for examination of pronote and cheque by a hand writing expert. The said application was rejected by trial Court. The High Court dismissed revision application. The appellant filed another application. The appellant filed another application for similar relief which was rejected by trial Court and thereafter the revision application by High Court. The Supreme Court observed that, accused is entitled for a fair trial. The concept, however, cannot be put to a straight jacket formula. A court of law will have to consider each application filed by an accused

praying for comparison of his signature on a disputed document with his admitted signature on its own merits. No hard and fast rule can be laid down therefor. The Court referred to section 243 of Cr.P.C. and decision en the case of *Kalyani Baskar* (supra) and *T. Nagappa* (supra). While analysing fact of that case it was noted that pronote was issued in the year 2002. The cheque was issued in 2004. complaint was filed in 2004. Keeping in view the peculiar facts and circumstances of the case the the Court felt that, the interest of justice would be sub-served if an opportunity is granted to the appellant to examine an expert at his cost. The trial Court should grant appellant opportunity to examine disputed documents. Thus the decision was delivered in the facts of that case.

17. This Court in the case of *Nandkumar Harane Vs. Vishwas Kshirsagar* (supra) has dealt with issue relating to examination of document by expert. The petitioner in that case was tried for offence under Section 138 of N.I. Act. After both sides adduced evidence, the petitioner preferred application, contending that the complainant is illegally doing the business of money lending and the accused has obtained loan from complainant and handed over blank cheque towards security. He repaid the loan. Complainant used to maintain diary of said loan transaction by making entry of daily collection received from accused towards repayment of loan amount.

Complainant gave a chit to the accused which is in his handwriting. The diary and chit were confronted with complainant during cross-examination, but he denied handwriting thereon. Hence, diary and chit be sent for handwriting experts opinion. The trial Court rejected the said application. This Court allowed the petition. This Court distinguished the decision in the case of *Prakash Sevantilal Vora Vs. State of Maharashtra* on the ground that the accused has prayed for sending diary and chit containing handwriting of complainant to handwriting expert for opinion and not the cheque with regards to signature or writing thereon.

18. In the case of *Shri. Prakash Sevantilal Vora Vs. The State of Maharashtra and Anr.* (supra) this Court had considered similar issue wherein the accused had preferred an application for sending disputed cheque to handwriting experts opinion. The accused was facing trial for an offence under section 138 of N.I. Act. Application was preferred by accused for sending cheques to the examiner of handwriting. It was contended that there are material alterations in the cheques, which were carried out without the consent of accused. The Negotiable Instrument was void. Cheques were not filled by accused. The Advocate for complainant had contended that application has been filed for the purpose of protracting the trial. The accused had never raised this issue regarding signature of cheques at

any time. No reply was given to the notice. It was observed that, in large number of complaints which are filed under Section 138 of the Negotiable Instruments Act, the question as to whether the application made by the accused for sending a document or cheque to handwriting expert should be allowed or not has to be decided by the learned Magistrate. On the one hand, in view of the provisions of section 243 sub-clause (2) of the Cr.P.C., the accused has a right to make an application to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing. On the other hand, discretion is vested in the Magistrate for rejecting the said application if he comes to the conclusion that it is made for the purpose of protracting the trial or for defeating the ends of justice. Reference was made to section 243 of Cr.P.C. and it was noted that the said provision clearly envisages that a fair opportunity has to be given to the accused to set up his defence and therefore he has a right to make an application for issuing summons for examining any witness of his choice or for production of any document or thing. However, this right is subject to permission being granted by the Magistrate. The Magistrate is also empowered under sub-clause (2) of section 243 to reject such application if he feels that it is filed for protracting the proceedings.

By virtue of this provision, the responsibility is cast on the Magistrate to act in fair, judicious and yet balanced way to ensure that the accused also gets a fair opportunity of defending his case and, at the same time, also to ensure that his provision is not misused by the accused only for the purpose of protracting the trial or to defeat the ends of justice. This becomes very relevant in a complaint which is filed under Section 138 of N.I. Act which is to be disposed off in a summary manner and as is laid down under Section 143(3) of the said Act within six months. Applications are also made for sending the document to handwriting expert. Section 45 of the Evidence Act lays down that the opinion of expert in certain circumstances is relevant. The opinion of the handwriting expert can be relied upon for the purpose of corroborating circumstantial evidence. Taking into consideration the aforesaid provision under the Cr.P.C. it will have to be seen whether the ratio of the judgments on which reliance is placed by either side is applicable to the facts of the case. Reference was made to decisions in the case of *Kalyani Baskar* (supra), *T. Nagappa Vs. Y. R. Murlidhar* (supra) and *G. Someshwar Rao Vs. S. N. Rao* (supra). It was held that trial Court has rightly rejected the application. This Court considered the decision of Madras High Court in *S. Gopal Vs. D. Balachandran*, wherein it was observed that, provisions contained in Section 20 applies only to a stamped

instrument such as pronote and bill of exchange and it has no application to the cheque. As per section 20 of the N.I. Act, the holder in due course has every authority to complete the blank pronote and bill of exchange delivered by him after properly signing therein by the maker of the instrument section 20 will have no application to the blank cheques issued after signing by the drawer. Summarising the ratio of decisions referred hereinabove it was observed that if an application is made for sending the documents to the handwriting expert, particularly in a complaint under section 138 of N.I. Act, the Magistrate has to consider the said application and taking into consideration the facts of each case decide as to whether it is a fit case for sending the said document to the handwriting expert. Proceedings under Section 138 of NI Act are of a summary nature and the Act itself contemplates that the said trial should be over within a period of six months. There is a tendency on the part of the accused to protract the trial as much as possible. On the one hand, it is true that the accused has a right to rebut the presumption which is raised under Section 118 and 139 of the Negotiable Instruments Act and, for that purpose, a fair opportunity has to be given to him. On the other hand, it is the duty of the Magistrate to ensure that by filing frivolous application, accused does not protract the trial. The Court then referred to number of cases pending in

Maharashtra State under Section 138 of the Negotiable Instrument Act and also noted that, substantial time is spent in receiving the hand writing expert opinion and thereby observed that, the Magistrate has to consider whether the application filed by the accused needs to be granted or not, taking into consideration the genuineness of the application and also after taking into consideration the individual facts of the case. Merely because the accused has a right of being given fair opportunity, it cannot be said that in each and every case, whenever applications are filed for sending the document to handwriting expert, the same should be allowed.

19. In the case of *K. S. Satyanarayana Vs. V. R. Narayana Rao* (supra) it was held that, the Court was empowered to compare the signature of the party by exercising power under Section 73 of the Indian Evidence Act.

20. This Court vide Order dated 8th April 2019 passed in Criminal Writ Petition Nos. 1033 of 2019 and Criminal Writ Petition No. 1034 of 2019 considered prayer for sending disputed documents to handwriting expert at the instance of accused, facing charge under Section 138 of Negotiable Instruments Act. It was observed that, the signature on the disputed cheque can be compared and verified by the learned Judge himself. The truth whether the accused has signed

the respective cheques can be ascertained on the basis of the circumstantial and other evidence tendered by the complainant and accused. Moreover, the original burden of proving the fact of the issuance of cheques and signatures thereon lies on the complainant. In many cases filed under Section 138 of Negotiable Instruments Act, there is an increasing trend of seeking order of sending the disputed cheques to the handwriting expert. The opinion of the handwriting expert can be admissible under Section 45 of the Evidence Act. However, the said opinion based on the science of handwriting is not so accurate and with precision like the opinion of a ballistic expert or DNA. It is physically impossible for the trial Court which is attending and trying the cases under the Negotiable Instruments Act to go on sending all the disputed cheques to the handwriting expert. It is summary trial. Both Petitions were rejected.

21. In the present case trial Court had observed that, the accused is attempting to make different signatures on different documents. The applications are filed to delay the proceedings. The applications are not bonafide and vexatious. The apex Court in the case of G. Someshwar Rao (*supra*) has observed that the accused is entitled to a fair trial which is a part of his right guaranteed under Article 21 of the Constitution of India. The concept, however, cannot be put to a straight jacket formula. A court of law will have to consider each

application filed by an accused on its own merits. No hard and fast rule can be laid down therefor. Section 143 (2) of N. I. Act. Provides that, the trial of a case under this section shall, so far as practicable, consistently with the interests of justice be continued from day to day until its conclusion, unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing. Sub-section (3) of said section provides that, every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint. Application for experts opinion in cases under section 138 of N.I. Act shall not be allowed mechanically merely on request of accused. The Court has to examine the bonafide/genuineness of such application. In the light and factual aspects of this case, the reasons assigned by learned Magistrate while rejecting the application, no case is made out for sending cheque for handwriting expert opinion. The Petition deserves to be dismissed.

ORDER

Criminal Writ Petition is rejected and disposed off.

(PRAKASH D. NAIK, J.)