

Ghuge

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

CRIMINAL WRIT PETITION NO.4860 OF 2019

Shantilal Dungershi Maru ...Petitioner
V/s.
Euro Ceramics Ltd. & Others. ...Respondents

Ms. Chaula Solanki a/w H.H. Nagi a/w Rinky R.
Kanojia, i/b Nagi & Associates for the respondents.

Mr. Ganesh Gole i/b Mr. Aarif Ali M. Ali for petitioner.

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

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 18, 2022

P.C.:

1. The petitioner-original complainant in the proceedings under Section 138 of Negotiable Instruments Act, 1881 is challenging an order of the Revisional Court granting permission to the accused allowing the application to send the cheques in question to the handwriting expert.

2. The petitioner-original complainant filed C.C. No.1165/SS/2012 under Section 138 of the Negotiable Instrument Act, 1881. On 5th December, 2017, the complainant filed his affidavit of examination-in-chief. The accused on 22nd January, 2019 filed an application for sending the cheque in question to the handwriting expert. It is stated in the application that the accused never issued cheque in question and since the complainant was visiting office of accused regularly, the cheque in question was stolen.

3. The learned Metropolitan Magistrate by order dated 30th March, 2019 rejected the application holding that the accused intends to prolong the matter by filing such applications and the reason for dishonour is not for the reason “signature differ”.
4. The accused, therefore, filed Revision Application No.722 of 2019. The Revisional Court by the impugned order allowed the Revision holding that the complaint is at the stage of recording of evidence of the complainant and no prejudice would be caused to the complainant if the cheque is referred to the handwriting expert.
5. Learned Advocate for the applicant invited my attention to the judgment of the Apex Court in **L.C. Goyal Vs. Suresh Joshi** reported in AIR 1999 SC 2222. The Apex Court in the said case held that the circumstances in the case show that the signatures on the disputed document were of the appellant.
6. He also invited my attention to the Judgment in the case of **Kalyani Baskar Vs. M.S. Sampornam** reported in (2007) 2 SCC 258 where the Apex Court has held that the learned Magistrate has power to grant such request unless he record findings that such application was with an intention to delay the proceedings.
7. He invited my attention to Section 243(2) of Code of Criminal Procedure, 1973 and submitted that it is only after the accused enters upon his defense, such application is maintainable subject to compliance of Sub-Section 2 of Section 243 and, therefore, it would not be proper for the learned Revisional Court

to allow such application.

8. *Per contra*, learned Advocate for the accused submitted that in the application the accused has raised a specific ground that the cheque was stolen and since the affidavit of evidence was filed in the month of December 2017, and the application for sending cheque to the handwriting expert had been filed in the month of January 2019, it ought not to have been treated as an attempt to delay the complaint. She submitted that the Revisional Court was justified in granting fair opportunity of hearing to the accused as the dispute is in relation to the signature on the cheque is a core issue.

9. Having considered submissions on behalf of both the sides and having gone through the provisions of Section 243(2), in my opinion, the learned advocate for the petitioner is justified in objecting and entertaining such application at the stage of cross-examination of the complainant. Reading of Section 243(2) of the Code of Criminal Procedure, 1973 makes it clear that exercise of such power is subject to later part of Sub-section 2 of Section 243 which needs to be considered by the Court while considering the application under Sub-section 2 of Section 243 after the learned Magistrate considers filing of such application intended vexatious or for causing delay in adjudication of the complaint or use of defeating ends of justice, the learned Magistrate would be within his right to reject such application.

10. Undisputedly, the application having been filed before the accused entered his defence on this limited question, the

petition succeeds. Hence, following order:

The impugned Judgment and Order passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.722 of 2019 dated 16th August, 2019 is quashed and set aside.

11. Rule is made absolute in the above terms. Rule is discharged.

(AMIT BORKAR, J.)