

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Criminal Writ Petition (WP) No. 401 of 2022

Raviraj S/o Yuvraj More
Versus
Shashikant Bajrang Agrawal

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.L.Ghatte, Advocate for the petitioner
Shri V.B.Bhise, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : 11th OCTOBER, 2022.

Heard.

2. The challenge raised in this petition is to the order dated 31st May, 2022 passed by 2nd Joint Civil Judge, Junior Division, Akot in Summary Criminal Case No.1168 of 2016, rejecting the application moved by the petitioner to refer the disputed cheque and acknowledgment dated 8th June, 2016 to the handwriting expert.

3. The learned trial Court while rejecting the said application, has recorded the reasons in following terms:

9. Further, mere perusal of disputed cheque reveals that, it is written in the blue ink and does not

appear to be in different handwriting. The accused has not given his specimen handwriting for comparing with the handwriting on the cheque as per section 311-A of the Code of Criminal Procedure, 1973. The Court can compare disputed handwriting with admitted handwriting. But the Accused has not given any such opportunity to the Court to compare handwriting on the cheque. Therefore, the application of the Accused to send the dispute cheque and acknowledgment to the Handwriting Expert is without any substance and devoid of merits. Once the Accused admits his signature on the cheque, it affords an opportunity to the Complainant to fill the blanks on the cheque as per his whims and fancies. While issuing the blank cheque one must know that he is giving written authority to the holder in due course of the cheque to write whatever, he wants on the cheque. By admitting signature on the cheque the presumption raised under Section 139 of the Negotiable Instrument Act is fortified and can never rebutted. Under such circumstances, the application made by the Accused without any defence or stand on record is an endeavor to prolong proceeding of the Court as rightly contended by the learned advocate for the Complainant. Thus, in view of above discussion, the application of the accused does not deserve to be allowed and is liable to be rejected with cost. Hence, I answer Point No.1 in the negative and in answer to Point No.2, I pass the following order. The application is rejected with costs of Rs.1,000/- payable to the complainant.”

4. Learned counsel for the petitioner submits that to grant a fair opportunity, the trial Court ought to have referred the matter to the handwriting experts and

by denying fair opportunity to rebut the presumption an injustice is caused to the petitioner. In support of his contention, he has placed reliance of judgments of Bombay High Court in the case of *Sharad S/o Balasaheb Sangle Vs. Deepak S/o Manohar Newse and others*¹ and *Shri Govind B. Prabhugaonkar Vs. Mrs. Romaldina Barreto E Carneiro and another*².

5. On the other hand, learned counsel for the respondent supports the impugned order.

6. In the light of the submissions made by both the parties, I have perused the impugned order and the documents filed along with petition.

7. Rejection of application to refer the disputed cheque and acknowledgment, for expert opinion of handwriting expert, cannot be said to be denying fair opportunity to the petitioner to raise his defence or rebut the presumption in view of the provisions under Section 73 of the Evidence Act, which permits the Court to compare disputed writings with the specimen/admitted documents shown to be genuine. Furthermore, the accused has every right to examine his own handwriting expert.

1 2014 ALL MR (Cri) 2997

2 2016 ALL MR (Cri) 348

8. The Hon'ble Supreme Court of India in the case of G.Someshwar Rao Vs. Samineni Nagehwar Rao and another³ has observed thus:

"9. Indisputably, an accused is entitled to a fair trial which is a part of his fundamental right as 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 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.

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11. In the case of Kalyani Baskar [2007 ALL MR (Cri) 820 (S.C.)](supra), this Court held as under :

"12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC 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 or procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

The said decision has been followed by this Court in the case of T. Nagappa [2008 ALL MR (Cri) 1945 (S.C.)] (supra) opining :

"8. An 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 oneself and for that purpose to adduce evidence is recognized by Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure,...."

12. In this case, the pronote was issued in the year 2002. The cheque was issued in the year 2004. The complaint petition was filed in the year 2004. The complainant examined his

witnesses in between the period September 2006 and February 2007. Appellant examined his own witnesses. They had been cross-examined. The learned Magistrate noticed that even the legal notice served upon him was not accepted by the appellant. The court, in the aforementioned situation, held that the gap between execution of two signatures is such where some variance is possible. Rightly or wrongly, his application was dismissed by an order dated 07th April 2007. Immediately thereafter another application was filed on 20th June 2007 which was not maintainable as allowing the same would have amounted to recall of an order passed by the learned Magistrate himself being impermissible in law. In the latter application only the document which was to be sent for comparison was changed.

13. Evidently, he had filed two successive applications; the second application was, thus, not maintainable. This itself goes to show that he intended to delay the disposal of the matter. He could have examined his own expert. He may still do so for which, we are sure, the court shall grant him reasonable opportunity. Even now, the court will be entitled to exercise its jurisdiction, if it so thinks fit and proper in terms of Section 73 of the Indian Evidence Act.

14. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice would be subserved if an opportunity is granted to the appellant to examine an expert at his own costs. If he requisitions the services of an expert, the learned Judge would grant him an opportunity to

examine the disputed documents, submit a report and examine himself as a witness in the case preferably on the same date. Such a step, however, must be taken by the appellant within six weeks from date.”

9. In the circumstances, as the petitioner is having right to examine his own handwriting expert in defence and can file his specimen signature or admitted signature for comparison by the Court under Section 73 of the Evidence Act, I do not find any substance in the submission of the learned counsel for the petitioner.

10. In the circumstances, in absence of any merit in the present writ petition, I pass the following order.

i. Writ petition is dismissed.

ii. Liberty is granted to the petitioner to take steps, if so advised, as observed in the case of *G. Someshwar Rao Vs. Samineni Nagehwar Rao and another* (supra)

[ANIL S. KILOR, J.]

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SACHINDANAND
K NAIR
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