

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

CRIMINAL WRIT PETITION NO.530 OF 2023

**ASHOK NANAJI WAGHCHOURE
VERSUS
ASHOK SHIVAJI MHASKE**

...

**Advocate for Petitioner : Mr. S. P. Sirsat h/f Mr. N.
L. Chaudhari**

...

CORAM : R.M. JOSHI, J

DATE : AUGUST 09, 2023

PER COURT :

1. This Petition takes exception to the order dated 01st December, 2022 passed below Exh. 36 and 42 in S.C.C. No. 952/2015 and below Exh. 44.

2. Respondent/complainant filed application Exh. 36 for leading secondary evidence. The said application was allowed by passing order dated 01st December, 2022. Perusal of the said order shows that learned Chief Judicial Magistrate, Sangamner has rightly taken into consideration the provisions of Sections 63 and 65 of the Evidence Act and permitted the complainant to lead secondary evidence. It was not open for the learned trial Court to go into the merits of the case and to decide as to whether the complainant would be in a

position to prove the document in question as secondary evidence. Having regard to the provisions of Sections 63 and 65 of the Evidence Act, the requisite conditions in permitting the secondary evidence are duly fulfilled. Herein this case, the complainant is seeking to lead secondary evidence in respect of the cheque which was misplaced after it was dishonoured. The order passed by the trial Court, therefore, cannot be faulted.

3. Perusal of the application vide Exh. 44 clearly shows that without there being any such provision to file application for dismissal of the complaint such application came to be filed. Said application was opposed by the complainant with raising objection that the same is filed with an intention to prolong the disposal of the complaint.

4. Perusal of the order passed by the learned trial Court below Exh. 44 clearly shows that merely because application for leading of secondary evidence filed by the complainant is allowed, it cannot become ground to say that false complaint has been filed against accused. This Court finds there is no substance

in the Petition. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)

Malani