

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

934 CRIMINAL WRIT PETITION NO.902 OF 2021

SUDHIR KUMAR SOHANLAL BAJ
VERSUS
SUBHASH MOHAN KATORE AND ANR

...

Advocate for Petitioner : Mr. A. Z. Gandhi
Advocate for Respondent 1 : Mr. V. Y Bhide
Mr. S R Yadav-Lonikar APP for respondent no.2.

...

CORAM : KISHORE C. SANT, J.
Dated: January 31, 2023

...

PER COURT :-

1. Heard learned advocates for the parties for some time.

By consent of the learned advocates for parties, taken up for final disposal.

2. Limited grievance of the petitioner in this writ petition is that, the application filed by the petitioner/original accused who is facing trial for the offence punishable under sections 138 of the Negotiable Instruments Act u/s 91 of the Code of Criminal Procedure as well as and also another application for sending the document to the hand writing expert's report are challenged. It is the case of the petitioner that, he has already made payment to the complainant and still the cheque, which was given towards security, has been misused by the
aaa/-

complainant. He had even examined two ex-employees of the complainant in support of his case in defence. One of the witnesses, however, denied his signature on the receipt of amount and, therefore, he filed an application for referring the documents to the hand writing expert. Application below exhibit 110 was filed calling for certain documents from the custody of the complainant.

3. Learned judge of the Trial Court by common order rejected both the applications observing that for the similar purpose two earlier applications were filed below exh. 95 and 96 and those were already rejected. Learned Trial Court further observed that the complainant has denied existence of the documents which are sought for by the accused.

4. Learned advocate for the petitioner strenuously submits that the documents are very much necessary for the purpose of finding out the truth. It was obligatory on the part of the learned J.M.F.C. to allow the application as documents are of some importance to throw light on the issues. So far as the application for referring the documents to the hand writing expert is concerned, learned Advocate submits that he had

aaa/-

examined the witness, who was an employee of the complainant. He denied his signature on the voucher/receipt and in that view, it is necessary to send the document to the hand writing expert. Learned counsel further submits that he had filed a revision in the Sessions Court, At Sangamner. He submits that on one hand revisional court observed that, revision is not maintainable and on the other hand, learned Revisional Court had considered the matter on merits and therefore, the same finding is recorded. Learned advocate for the petitioner submits that application exh. 95 and 96 were in fact not for similar purpose. Be that as it may.

5. Learned advocate for respondent submits that the complainant cannot be compelled to produce the documents and more-so when he has denied existence of such documents. So far as sending the documents for hand writing expert's report, he submits that, the witness, who was called by the accused himself, has denied the signature on the voucher. If it is the case of the accused that he has already paid the amount then, it is for the accused to prove his case in view of the presumption under section 139 of the NI Act and supports that the order is rightly passed by the learned JMFC.

aaa/-

6. After hearing the parties, this Court finds that the learned Magistrate has applied her mind to the provisions, application and submissions. This Court does not find any illegality with the order requiring interference at the hands of this Court. So far as the submissions in respect of the finding recorded by the learned Revisional Court in revision is concerned, this Court finds that it is purely an academic question since this court has already examined the orders passed by the learned trial court and revisional Court. There is no need to consider his submissions. This Court finds that there is no merit in the petition and the same is dismissed. Trial Court is requested to expedite the Trial and to dispose it off, as early as possible, and preferably within a period of six (06) months from today.

(KISHORE C. SANT, J.)

...