IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 753 OF 2023

Shivtirth Dudh Dairy Through
Mr. Phokane Shivaji Eknath ..Petitioner

Versus

The Nashik Merchant Co-Op. Bank Ltd.
and another. ..Respondents

Mr. Vedchetan Patil a/w. Sunayana Kashid a/w. Vishwa G. Patil for Petitioner.

Ms. Sushma Satpute a/w. Shakuntala Shetty i/b. Satpute and Shetty Associates for Respondent No.1.

Ms. Sangita D. Shinde, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 4 DECEMBER 2023

PC :

1. Heard Mr. Vedchetan Patil, learned counsel for the Petitioner, Ms. Sushma Satpute, learned counsel for the Respondent No.1 and Ms. Sangita Shinde, learned APP for the State.

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2. The Petitioner has challenged the order dated

31.01.2023 passed below Exhibit-49 in S.C.C.No.9929 of 2019 by the 7th J.M.F.C., Nashik. By the impugned order, the learned Magistrate rejected the application at Exhibit-49 praying for sending the cheque, which is the subject matter of the trial which is at Exhibit-34, for comparison with the admitted signature of the petitioner, for examination by an expert in examining the hand writing.

3. The petitioner is the original accused in that case. The complaint was filed by the Respondent No.1 herein. It is the case of the complainant that the Respondent No.1 had sanctioned and paid loan of Rs.6,75,00,000/- to the petitioner on 18.07.2016 after taking security of his property. There was default in making the payment including the interest. Therefore, the petitioner gave a cheque, signed by him as the Proprietor of Shivtirth Milk Dairy, dated 21.10.2019 drawn on the Respondent No.1's bank, Satpur branch, for the amount of Rs.6,78,34,144/-. The cheque was dishonoured. After completing the formalities the complaint was filed. The learned Magistrate issued process U/s.138 of the Negotiable Instruments Act vide the order dated 17.01.2020.

Thereafter the trial proceeded and the complainant's witness CW-1 Dhongde was examined. He filed his affidavit in lieu of examination in chief. He was cross-examined by the petitioner. The complainant-Respondent No.1 examined only one witness. Thereafter the petitioner's statement U/s.313 of the Cr.P.C. was recorded. After that the application at Exhibit-49 as referred to herein above was preferred; which was rejected.

4. Learned counsel for the petitioner invited my attention to page 36 of this petition memo which is a photocopy of the loan application form bearing the signature of the petitioner. He submitted that, a copy of the cheque is at page-66. The signatures on these two documents are so different that even without hand writing expert's opinion it can be seen that the cheque is not signed by the petitioner. He submitted that, there was no delay on his part to file the application and that, it was the right stage after recording of the statement U/s.313 of the Cr.p.c. when the petitioner could have made this application for sending the documents for opinion of an expert. He submitted that, in the interest of justice, the opportunity cannot be denied to the

petitioner to establish his innocence and rebut the allegations against him. He submitted that the examination in chief was followed by the cross-examination which was concluded on 07.10.2022. In the cross-examination, the petitioner has laid the foundation of his defence that the signature on the cheque was not his signature. Even in the statement U/s.313 of the Cr.P.C. which was recorded on 18.10.2022, he had taken the same defence and, therefore, there is no delay in preferring the application on 07.11.2022. He submitted that the petitioner has no intention to delay the matter.

5. Learned counsel for the Respondent No.1 submitted that the complaint is pending since the year 2019. The petitioner has not denied his signature on the cheque till conducting the cross-examination. He had an option of responding to the statutory notice even before registration of the complaint, taking up defence of forgery of the signature; but this defence is taken for the first time at the time of conducing the cross-examination in the year 2022. This shows that the petitioner is only interested in prolonging the matter and there is no substance in his contention.

She further submitted that the learned Magistrate has given sufficient reasons for rejecting the petitioner's application. The learned Magistrate has observed that the petitioner had not replied to the notice and had not shown any reason or intention on the part of the respondent No.1-complainant to forge the signature of the petitioner; when he had admitted the loan transaction itself.

6. I have considered these submissions. While it is true that the petitioner has not immediately taken the defence of forgery of his signature by replying to the statutory notice; at the same time, it cannot be ignored that, at the stage of cross-examination of the complainant's witness, he had specifically taken this defence and had suggested to the complainant's witness that the original cheque was in possession of the bank-respondent No.1. Forged signatures of the petitioner's were put on the cheque. The same defence was repeated in the statement recorded U/s.313 of the Cr.p.c. where it was mentioned that, he had not issued any such cheque. The cross-examination was over on 07.10.2022 and the statement U/s.313 of the Cr.p.c. was recorded on 18.10.2022. Thereafter the application at Exhibit-49 was made on 07.11.2022.

Thus, after the trial started, it does not appear that the petitioner had deliberately prolonged the trial and that he had made this application much belatedly. The amount of the cheque is huge. The petitioner has taken a specific defence that, it is not his signature on the cheque. The same suggestion was given to the complainant's witness. Therefore, in the interest of justice, no prejudice would be caused to the Respondent No.1 if the cheque and the admitted signature of the petitioner is sent for comparison by the hand writing expert. At the same time, it cannot be ignored that the complaint is pending since 2019 and the petitioner had not specifically replied to the statutory notice mentioning that the signature on the cheque was not his signature. Therefore, some reasonable cost can be imposed on him which can be made payable to the Respondent No.1. At the same time, some instructions will have to be given to get the hand writing expert's opinion as expeditiously as possible. Both learned counsel submitted that the signature of the petitioner appearing on the loan application form is not disputed by either of the parties. The statement is recorded and accepted.

7. Hence, the following order:

<u>O R D E R</u>

i) The impugned order dated 31.01.2023 passed below Exhibit-49 in S.C.C.No.9929 of 2019 passed by the 7^{th} J.M.F.C., Nashik, is set aside.

ii) The learned Magistrate shall send the relevant documents viz. Loan application form, the cheque, the loan agreement and the specimen hand writing of the petitioner which can be obtained by the Trial Court, to the Government Examiner of hand writing, CID, Pune, Maharashtra State.

iii) The concerned authority shall prepare its report and send it to the Trial Court at the earliest.

iv) After the report is received by the Trial Court, the trial shall proceed from that point onwards.

v) The petitioner shall pay cost of Rs.25,000/- to the Respondent No.1 within a period of one month from today.

vi) The petitioner shall also deposit cost for examination of the documents in the Trial Court within a period of four weeks from today.

vii) With these observations, the petition is allowed to that extent and is disposed of.

(SARANG V. KOTWAL, J.)