



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

Writ Petition No. 1499 of 2020

Kantilal Premchand Nagariya	...	Petitioner
v/s.		
The State of Maharashtra & anr.	...	Respondents

Mr Sandesh Patil i/b. Prithviraj S. Gole for the petitioner.

Mr A.A. Palkar, APP for the State.

CORAM : R.N.LADDHA, J.

DATE : 31st August 2023

P.C. :

Heard learned counsel for the petitioner.

2. The legality, propriety and correctness of the order passed by the learned JMFC, Bhiwandi, in SCC No.3768/2016 is assailed in this writ petition.

3. The petitioner/accused has been prosecuted for the offences punishable under Section 138 of the Negotiable Instrument Act, 1881, by the Complainant-respondent No.2 herein. The petitioner-accused has tendered this application Exhibit 53 with a prayer of appointment

of a forensic expert to opine regarding the age of the signature and rest of the material written on a cheque.

4. The Magistrate, however, rejected the application on the ground that cross-examination of the Complainant is still pending. The evidence of the accused will only be recorded after his statement under Section 313 of the Cr.P.C. has been recorded. The accused must prove the existence of another transaction, and then the expert's opinion can be used as corroborative evidence to support the evidence.

5. The learned counsel for the petitioner submitted that the Complainant had altered an old cheque that was originally obtained for a different transaction that had been completed. As a result, the cheque in question remained in the possession of the Complainant. It was, therefore, necessary to verify the age of the signature of the accused as well as other material written on the cheque by the Complainant.

6. Relying on the decision of the Supreme Court in the case of *Kalyani Baskar (Mrs.) v/s. M.S. Sampooram (Mrs.)*¹, he submitted that by rejecting the application, the Magistrate deprived the petitioner of proving his innocence. According to the learned counsel, the petitioner should not be prevented from presenting her defence. He complains that the rejection of this application had resulted in a miscarriage of justice for the petitioner.

1 (2007) 2 SCC 258

7. The order passed by the Magistrate indicates a proper application of mind. The learned Magistrate has given cogent reasons which persuaded her to reject the application. The learned Magistrate was well within her rights to note that the application was premature. The cross-examination of the Complainant is still pending. The accused can lead the evidence once the statement under Section 313 of the Cr.P.C. has been recorded. In *kalyani Baskar* (supra), the accused made a request to send the cheque in question for the opinion of the handwriting expert after the Complainant had closed her evidence but the Magistrate rejected his request. In this situation, the Hon'ble Supreme Court held that the Magistrate should have granted her request. Even otherwise, the opinion of the forensic expert would still be in the nature of opinion evidence. Thus, I am inclined to hold that the learned Magistrate was justified in rejecting the prayer for sending the subject cheques for the expert's opinion at this stage of a trial.

8. For the foregoing reasons, the petition stands dismissed.

9. Needless to state that this Court has not gone into the merits of the matter and the contentions of the respective parties are kept open. It goes without saying that if necessary, the petitioner is free to seek legal remedies for his grievances, if occasion so arises.

R.N. LADDHA, J.