AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1657 OF 2023
WITH
WRIT PETITION NO.1658 OF 2023

Santosh Kisan Gaikwad … Petitioner

V/s.

Santosh Prabhakar Kharat & Anr. … Respondents

Mr. Ganesh Bhujbal for the petitioner.

Mr. Arfan Sait, APP for respondent no.2/State in WP/1657/2023.

Ms. M.R. Tidke, APP for respondent no.2/State in WP/1658/2023.

CORAM : AMIT BORKAR, J.

DATED : MAY 4, 2023

P.C.:

1. By the present writ petitions, the petitioner who is original accused in a proceeding under Section 138 of the Negotiable Instruments Act, 1881 is challenging two orders: (i) order rejecting application to send disputed cheque to the hand-writing expert; and (ii) application for production of income-tax returns.

2. Learned Magistrate has rejected application for sending disputed cheque to the hand-writing expert on the ground that the petitioner/accused has admitted signature on the disputed cheque. The fact situation is no longer *res integra* in view of the judgment of the Apex Court in **Oriental Bank of Commerce v.**

Prabodh Kumar Tewari reported in 2022 SCC OnLine SC 1089. Paragraphs 18 and 19 of the said judgment read thus:

> "**18.** For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.
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> **19.** Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability."

3. Since the fact situation of the present case is squarely covered, the order impugned does not suffer from any illegality.

4. The application for production of income-tax returns has been rejected on the ground that initial burden to prove legally recoverable liability is on the complainant. If this be so, it is for the complainant to initially prove the factum of legally recoverable liability. Therefore, rejection of an application to produce documents in the form of income-tax returns would not cause any legal prejudice to the petitioner. Hence, no interference is called for in the impugned order.

5. There is no merit in the writ petitions. Both the writ petitions stand dismissed in above terms. No costs.

(AMIT BORKAR, J.)