

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

CRIMINAL WRIT PETITION NO.5413 OF 2021

Manik Rambhau Dindore Petitioner
versus
Sunanda Pandit Jawale & Ors. Respondents

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- Mr. Milind R. Deshpande, Advocate for Petitioner.
- Mr. Sharad Bhosale a/w Kiran Gawalwad a/w Swapnali Pednekar, Advocate for Respondent No.1.
- Mr. Sangita D. Shinde, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 04th DECEMBER, 2023

P.C. :

1. The Petitioner has challenged the order dated 06/07/2019 passed by the Judicial Magistrate First Class, Barshi, below Ex.107 in S.C.C. No.1003/2003.

2. The Petitioner is the accused in this case and the Respondent No.1 is the original complainant. The trial is for commission of offence punishable u/s 138 of the Negotiable Instruments Act.

3. The application at Ex.107 was made for sending Ex.42 bearing signature of the Respondent No.1's husband on his affidavit in the nature of examination-in-chief to the handwriting expert. The Petitioner wanted comparison of that signature on a writing produced by the Petitioner in the Trial Court, whereby the Respondent No.1's husband purportedly had mentioned that if the amount was received, no further step would be taken. This application was rejected by the impugned order.
4. Learned counsel for the Petitioner submitted that the husband of the Respondent No.1 had assured that no steps would be taken if the amount is received. Therefore, the comparison of his signature is necessary to establish that the complaint is filed without consent of the Respondent No.1's husband.
5. Learned counsel for the Respondent No.1 submitted that a similar application for the same relief was preferred by the Petitioner at Ex.56 in the same trial. That application for the same relief was rejected vide the order dated 03/11/2012. It has attained finality and thereafter a fresh application at a much belated stage was made in the year 2018. The said application at

Ex.107 was rightly rejected. He therefore submitted that there is no substance in the present Petition.

6. I have considered these submissions. The complaint is filed by the Respondent No.1. It is her case that the Petitioner used to hire her husband's tractor. He used to purchase bricks from Respondent No.1's husband and therefore there was relationship of trust between them. On 15/01/2023, the Petitioner sought assistance of Rs.50,000/- from the Respondent No.1. She gave him that amount. There was due amount of Rs.90,000/- which was payable by him in their business relations. Thus in all he owed Rs.1,40,000/-. In repayment of that amount, he issued a cheque dated 27/03/2003 for the amount of Rs.1,40,000/- issued on Solapur District Central Co-op Bank Ltd., Solapur. That cheque was dishonoured resulting in filing of the complaint.

7. Learned Magistrate while rejecting the application at Ex.107 observed that a similar application was preferred at Ex.56 and it was rejected. Similar relief was sought by a

separate application at Ex.107. The impugned order referred to the observations of the earlier learned Trial Judge made on 03/11/2012 below Ex.56. It was observed that the cheque was issued in favour of the complainant and therefore the endorsement made by the husband of the complainant was not binding on the complainant. I do not see any fault or illegality in the reasoning and the approach adopted by the learned Judicial Magistrate First Class, Barshi, while passing the impugned order below Ex.107 in S.C.C. No.1003/2003. The endorsement made by the Respondent No.1's husband cannot be binding on her. She was the beneficiary of the cheque. Therefore the prosecution was maintainable at her instance.

8. Learned Magistrate has rightly passed the impugned order and has rejected the application at Ex.107 in the said case. Therefore, I am not inclined to entertain this Writ Petition. Consequently, the Writ Petition is dismissed.

(SARANG V. KOTWAL, J.)