

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

Writ Petition No. 4876 of 2022

Smt. Kamini Shivaji Raikar

Age-35 Years, Occupation :Service

R/at : Vadgaon Bk. Rutuja Niwas Jadhav

Nagar, Pune, District : Pune

... Applicant.

(Original Accused)

v/s.

1. Subhash Sukhlala Changani

Age- 60 years, Occupation : Businessman

R/at : Sharda Complex Gokul Nagar, Pune

District : Pune

...Respondent No.1

(Original Complainant)

2. State of Maharashtra

(through Public Prosecutor,

High Court of Bombay, Mumbai)

...Respondent No.2.

Mr Manoj M Gadkari for the petitioner.

Mr Aditya Sawant, appointed advocate for respondent.

Ms M.H. Mhatre, APP for the State.

CORAM : R.N.LADDHA, J.

DATE : 8 November 2023.

P.C. :

Heard learned counsel for the parties.

2. The legality, propriety and correctness of the order dated 16.3.2022, passed below Exhibit 40 by the learned JMFC, 15th

Court, Pune, is assailed in this writ petition.

3. The petitioner/accused has been prosecuted for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (for short, 'the NI Act') by the complainant-respondent No.1 herein. The petitioner-accused filed the application Exhibit 40 with a prayer of sending the original cheque in dispute to the handwriting expert for his opinion.

4. The Magistrate, however, rejected the application on the ground that the accused has not specifically denied her signature over the cheque, and the dispute was only related to the handwriting over the said cheque. The application was filed during the cross-examination of the complainant. The evidence of the complainant is yet to be closed. The accused has every opportunity to lead the evidence and to rebut the statutory presumption of legal liability, which is in favour of the complainant.

5. The learned counsel for the petitioner submitted that respondent No.1 had misused the cheque, which was with her late husband, and the petitioner has never taken any loan amount from respondent No.1 as alleged in the complaint nor had issued any cheque to the respondent towards any legally enforceable debt. He submitted that during the cross-examination, the complainant admitted that the accused came to his residence, wrote the cheque

and signed the same in front of him. He submitted that the petitioner/accused, during the cross-examination of the complainant/first respondent, filed an application below Exh.40 claiming that the contents of the disputed cheque are not in her handwriting and to prove her defence the cheque may be sent to handwriting expert to ascertain the handwriting on the cheque which the respondent No.1 alleged to be that of the petitioner.

6. Relying on the decision of the Supreme Court in the case of ***T. Nagappa Vs. YR Muralidhar***¹, he submitted that by rejecting the application, the Magistrate deprived the petitioner of proving her innocence. According to the learned Counsel, the petitioner should not be prevented from presenting her defence.

7. The order passed by the Magistrate indicates a proper application of mind. The learned Magistrate has given cogent reasons while passing the impugned order. 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 Bhaskar (Mrs.) Vs. MS Sampooranam (Mrs.)***², of which the reference is found in ***T. Nagappa*** (supra), the accused made a request to send the cheque in question for the opinion of the handwriting expert after the complainant had closed

1 (2008)5 SCC 633.

2 (2007)2 SCC 258.

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 cheque for the expert's opinion at this stage of the trial.

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

[R. N. Laddha, J.]