

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.31 OF 2023

1. Shri Sudhir S/o. Gopal Hiranwar,

Aged : 57 Yrs., Occ.: Private,

2. Shri Harish S/o. Gopal Hiranwar,

Aged : 55 Yrs., Occ.: Private,

3. Shri Ajay S/o. Gopal Hiranwar,

Aged : 50 Yrs., Occ. Private,

All R/o. Plot No. 216, Gopal Bhavan

Mata Mandir, Gokulpeth, Nagpur

.... **PETITIONERS**

// VERSUS //

Shri Harish S/o. Purushottam Yelne,

Aged about 46 Yrs., Occ. Business,

R/o. Telipura, Pevtha, Itwari, Nagpur

.... **RESPONDENT**

Shri C. G. Barapatre, Advocate for the petitioners

Shri A. R. Dhoble, Advocate for the respondent

CORAM : G. A. SANAP, J.

DATED : 15th MARCH, 2023

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.

3. In this petition, challenge is to the order passed by the learned Judicial Magistrate First Class, (Special Court Under Section 138 of the Negotiable Instrument Act, 1881), Nagpur, whereby the learned Magistrate overruled the objection taken by the accused/petitioners for exhibiting the computerized cheque return memo.

4. It is stated that the computerized cheque return memo without signature and seal would not have been admitted in evidence by the learned Magistrate. The learned Advocate for the petitioners submits that before admitting the document in evidence and exhibiting the document, learned Magistrate ought to have decided the objection on the touch stone of the law.

5. Learned Advocate appearing for the complainant/respondent No.1 in all fairness submits that in order to prove this computerized cheque return memo/intimation of dishonor of cheque, the complainant is required to examine the witness from the concerned bank. Learned Advocate submits that complainant is proposing to examine the witness from the concerned bank. Learned Advocate submits that considering the fact that the computerized cheque return memo is neither signed nor sealed, it has to be proved in accordance with law.

6. In my view, this submission advanced on behalf of the complainant would take care of primary grievance made by the accused. It is further pertinent to note that the proof of the contents of the documents, before it is admitted in the evidence, in the fact situation is in the interest of the complainant. In that sense, the insistence on the part of the accused to prove the contents of the return memo according to law is beneficial for the complainant.

7. In the facts and circumstances, the petition can be disposed of by recording the submission/statement made on behalf of the complainant. It is made clear that the complainant shall, therefore, summon the witness from the bank with the relevant record to prove the contents of computerized cheque return memo. Learned Magistrate as and when such request is made, shall consider the same in accordance with law. As such, the grievance of the accused/petitioners stands redressed. The petition is accordingly **disposed of**, in the above terms.

8. Rule accordingly.