

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 8 OF 2024

Janardhan Namdeo Nikam
Age- 65 years, Occupation-Agri
R/o. Girawli, Tq- Bhoom
Dist - Osmanabad

..Petitioner

Versus

1. The State of Maharashtra,
[Copy of respondent no. 1 to be served on Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad.
2. Shakuntala Ankush Mote
Age- 56 years, Occupation- Agri
R/o. Girawli, Tq- Bhoom
Dist - Osmanabad

..Respondent

...

Advocate for the Petitioner : Mr. S.J. Salunke
Advocate for Respondent No.1/State : Mr. S.R. Wakale

...

CORAM : S.G. MEHARE, J.

DATED : JULY 23, 2024

ORDER :-

1. Heard learned counsel for the petitioner.
2. Issue notice to the respondents.
3. Learned APP waives service of notice for the State.
4. The petitioner, who is an accused for the offence punishable under Section 138 of the Negotiable Instruments Act has impugned the order of the learned Judicial Magistrate First Class, Bhoom passed below Exhibit-44 in S.C.C. No.345/2017 dated 20.07.2023.

5. The petitioner, who is the brother of the complainant, had applied to send the disputed cheque to a handwriting expert to obtain his opinion. The applicant has a case that he did not issue the disputed cheque for the alleged date. The complainant negotiated the blank cheque and filed a false complaint. The petitioner did not write the contents of the cheque except the signature. There was a material alteration in ink, handwriting, and amount. To bolster his arguments, he placed certain case laws on record.

6. Learned APP opposed the application. He would point out that the applicant admitted his signature on the cheque. Therefore, there is no need of send the cheque to the handwriting expert. The learned Magistrate, reading Section 20 of the Negotiable Instruments Act, correctly dismissed the application of the petitioner. The Sessions Court also dismissed his revision.

7. Learned counsel for the petitioner would submit that the compensation for the land acquisition of the family land was awarded. There was a settlement in the family. A huge amount of Rs.60 lac was agreed to be paid to the complainant. He further argued that the cheque in dispute was lost. However, he did not deny his signature on the cheque in dispute. The complainant has a case that the said cheque was issued to pay the share amount, which the petitioner agreed to pay her.

8. Can a document like a cheque be sent to the handwriting expert mechanically is a question for consideration. Learned counsel for the petitioner relied on the case of T. Nagappa Vs. Y.R. Muralidhar, A.I.R. 2008 SC 2010, wherein the facts of the case were that the contention of the accused was that the cheque was signed in the year 1999 and the writing on the cheque has been filled up in the month of August, October and December 2004. Discussing the relevant provisions of law, with peculiar facts, the Court allowed the petition. The Court has observed in para 10 that it is not necessary to have any expert opinion on the question other than the following :

"Whether the writings appearing in the said cheque on the front page is written on the same day and time when the said cheque was signed as "T.Nagappa" on the front page as well as on the reverse, or in other words, whether the age of the writing on Ex.P2 on the front page is the same as that of the signature "T.Nagappa" appearing on the front as well as on the reverse of the Cheque Ex.P2?"

The Court also observed that the very fact that by reason thereof under Section 20 of the Negotiable Instruments Act, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bona fide. In these peculiar circumstances, the Court allowed the application.

9. He further relied on the case of M/s. Survika Distributors Pvt. Ltd. And Another Vs. M/s. S.R. Retail Zone Pvt. Ltd., 2018 S.C.C. Online Orissa 92. It was also the case filed under Section 138 of the Negotiable Instruments Act. The cheques were issued and handed over to the complainant in good faith for use of the same whenever required by the petitioners for the purpose of their business. However, the cheques were misused by the complainant, who filled out the blank entries in the cheque and mentioned the date and amount. On this fact, the Orissa High Court considered the submissions of the counsel for the accused, which were advanced before it that the cheques in dispute were handed over to the complainant in good faith and those were kept with the complainant. However, the complainant misused the cheques, and the date, amount, and other details were filled out by the complainant in the cheques in dispute. It was further contention of the petitioners/accused that the accused persons were not residing at the address given in postal A.D.s and some other persons had received the notice and put the signatures in the names of the accused and the signatures appearing on the postal A.D.s were not that of the accused persons. Under these premises, the Court took the view that the contents of the cheque should be sent to the handwriting expert.

10. Further, learned counsel for the petitioner relied on the case of Padum Kumar Vs. State of Uttar Pradesh, (2020) 3 S.C.C. 35.

He read Sections 45 and 46 of the Indian Evidence Act and argued that while appreciating the expert opinion, the Court must see that such evidence is corroborated by other evidence, either direct or circumstantial evidence. He referred to certain admissions in the cross-examination of the complainant and argued that those admissions are corroborating the contention of the applicant.

11. The facts of the case are that there was a settlement between the complainant and the accused for paying the share to the complainant from the compensation received for the land acquisition. This was done in 2017. The cheque is also of 2017. Instead of lodging the complaint of missing the cheque, the applicant published it in the newspaper, and also informed the bank. The accused had a case that he has already intimated the bank about the missing of cheque. Admittedly, the contents of the cheque are not written by the accused is also not the case of the complainant. However, his signature is admitted. Each case has its own facts and circumstances. The case of the complainant is specific that she was to receive her share in the land acquisition compensation. There was a settlement; however, the applicant failed to pay her share. Hence, the cheque given to her was presented for encashment. Section 20 of the Negotiable Instruments Act is very clear that where one person signs and delivers it to another, either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the

holder thereof to make or complete, as the case may be, upon it a negotiable instrument. However, to believe the truthfulness of the issuance of the cheque, the person who has been authorized to make a negotiable instrument complete by writing the contents except for the signature, the amount specified therein should not exceed the amount to be recovered by the person whom the cheque has been delivered. The cheque amount is exactly the same as what the applicant promised to pay to the complainant against her share upon receiving the compensation. In these peculiar circumstances, the cheque in dispute is belied to be issued against the share of the compensation. The Court is of the view that the impugned order is legally correct and proper. The petitioner may rebut the presumption available to the complainant under the provisions of the Negotiable Instruments Act.

12. the Court finds no substance in the petition for the above reasons. Hence, it is dismissed at the admission stage.

(S.G. MEHARE, J.)