



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

954 CRIMINAL WRIT PETITION NO. 412 OF 2024

GAYATRI SHYAMSUNDAR TOSHNIWAL

VERSUS

OMPRAKASH GOPILAL TAPDIYA

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Advocate for Petitioner : Mr. Bora Satyajit S.
Advocate for Respondent : Mr. Patnurkar Vinayak. D.

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CORAM : S. G. MEHARE, J.

DATE : 16.08.2024

PER COURT :-

1. Heard the respective learned counsels.
2. The petitioner is an accused in the case under Section 138 and moved an application for sending the chit in the hand writing of the wife of the complainant to the hand-writing expert.
3. The learned counsel for the applicant submits that immediately after the notice, the applicant had disclosed his defence. He has a stand since beginning that the cheque in dispute was issued to the wife of the complainant as a security towards the Bhisi, she was running. The said cheque has been misused. To prove the Bhisi transaction, he had produced one chit and put the questions in cross-examination. Since the

complainant denied the hand-writing of his wife on chit along with list Exh.65. He moved an application for sending the chit for the expert opinion of hand writing to identify whether the contents of chit are in her hand-writing. He would submit that the reasons for refusing to send the documents to hand writing expert are against the facts. Hence, writ petition may be allowed.

4. Learned counsel for the respondent has vehemently argued that it was an attempt at the belated stage to produce the evidence to protract the proceeding. There was nothing on record to show that chit was the relevant document to the question of fact. Since 2017, the complainant is running after the applicant to recover his money. There was nothing on record to believe that the said chit has any relevance with the dispute. Therefore, learned Magistrate has correctly dismissed the application.

5. Learned counsel for the petitioner had produced the copy of the reply notice in which he has a stand that the cheque was issued to the wife of the complainant as a security towards Bhis. He also cross-examined the complaint on those facts, by showing the chit was available with him. The complainant denied that it was in the hand-writing of his wife.

Therefore, the defence wanted to prove that it was the hand-writing of his wife. The accused has also the defence that the contents of the cheque were filled by the wife of the complainant. Considering the defence since the notice reply till cross-examination of the complainant there appears relevance. However, the complainant denied that the chit produced was in the hand writing of the wife. Considering the facts, the Court is of the view that the petitioner should have been allowed to prove the defence. Hence, the writ petition deserves to be allowed.

ORDER

- (i) The writ petition stands allowed.
- (ii) The impugned order of learned Judicial Magistrate First Class, Court No.2, Nanded, in SCC No.2387 of 2017, passed below Exh.89, dated 14.02.2024 stands quashed and set aside.
- (iii) Application Exh.89 is allowed.
- (iv) Both parties are directed to co-operate with the Court to expedite the matter. If require, the wife of the complainant be called to the Court for hand writing samples for comparison.

- (v) The expenses of hand-writing expert should be borne by the petitioner.

(S. G. MEHARE, J.)

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vmk/-