



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

926 CRIMINAL WRIT PETITION NO. 1800 OF 2023

SHIVRAJ KERBA JADHAV

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for the Petitioner : Mr. Ingale Vivekanand V.

APP for Respondent/State : Mr.P.K. Lakhotiya

Advocate for Respondent no.2 : Mr.Kedar Ganesh L.

...

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 8th August, 2024.

P.C.:

1. By this writ petition, the petitioner is challenging the order dated 5th October, 2023 passed by the Additional Sessions Judge-4, Latur in Criminal Revision Application No.24 of 2022.

2. It is contention of the learned counsel for the petitioner that respondent no.2 had issued cheque in favour of the petitioner for his legal liability, but the said cheque was dishonoured when it was presented in the bank. The petitioner has filed complaint under section 138 of the Negotiable Instruments Act (for short, "N.I. Act") against respondent no.2, which is pending before the Judicial Magistrate, First Class, Renapur (for short, "trial Court"). The learned counsel further submitted that during pendency of the trial the respondent had filed an application for sending the cheque to handwriting expert to verify the signature of the respondent no.2. The said application is rejected by the trial Court, but it is allowed by the Sessions Court without any

reasonable ground. The learned counsel further submitted that before filing the complaint the notice was issued to the respondent, but the respondent did not reply to the notice. The bank memo in respect of dishonour of cheque shows “the funds insufficient” and it is not for “stopped payment”. It means the defence taken by the respondent about difference in signature is after thought and only to prolong the matter but these facts are not considered by the Sessions Court and requested to allow the writ petition.

3. It is contention of the learned counsel for respondent no.2 that the cheque allegedly issued by respondent no.2 is returned as the writing on the said cheque is by different ink and signature is by different ink. There is overwriting on the said cheque. Respondent no.2 is denying the signature on the said cheque. The Sessions Court has considered all these aspects. Moreover, the petitioner in his cross examination has admitted that he has no objection to send the cheque for handwriting expert. Once the petitioner admits in cross-examination he can not challenge it and requested to dismiss the writ petition.

4. I have heard both the learned counsel. Perused the impugned order passed by the Sessions Court.

5. While passing the order, the learned Sessions Judge has observed that the petitioner in his cross-examination has admitted that he has no objection for sending the cheque to handwriting expert on that basis the learned Sessions Judge has passed the impugned

order. I do not find any infirmity in it. In my view, once the petitioner admits in his cross-examination about sending the cheque for handwriting expert, he can not deny it later on. Moreover, the complaint can be decided on its own merit. In view of the above, I pass the following order :-

ORDER

- (i) Writ petition is dismissed.

[SHIVKUMAR DIGE, J.]

sga