



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1020 CRIMINAL WRIT PETITION NO. 1861 OF 2023

Ayub Habisab Gutare

VERSUS

Rajkumar Kishanrao Telang

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Advocate for the Petitioner : Mr. Krishna P. Rodge

Advocate for Respondent : Mr. P.P. Dawalkar

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CORAM : SHIVKUMAR DIGE, J.
DATED : 1st AUGUST, 2024.

PER COURT :-

1. By this writ petition, the petitioner has challenged the order dated 10.10.2023 passed by the Judicial Magistrate, First Class, Udgir (for short, "the trial court") below Exh.92 in S.C.C. No. 560 of 2016.

2. It is the contention of learned counsel for the petitioner that the respondent has filed a complaint under Section 138 of Negotiable Instruments Act against the petitioner, which is pending before the trial court. During pendency of the said complaint, the petitioner had filed an application before the trial court to issue witness summons to the Manager of the erstwhile State Bank of Hyderabad now the State Bank of India, in support of his contentions. The learned counsel further submitted that the petitioner had taken specific plea that three

cheques of the petitioner had lost and to prove the said fact, he want to examine the Branch Manager but this fact is not considered by the trial court and requested to allow the writ petition.

3. It is the contention of learned counsel for the respondent that the application was filed by the petitioner only to prolong the matter, as in the reply to the notice of the respondent, no such stand was taken by the petitioner. It is an afterthought defence. Moreover, the return memo of the cheque shows “insufficient funds” and not “stop payment”. The trial court has observed all these facts in its well reasoned order. No interference is required in it and requested to dismiss the writ petition.

4. I have heard both the learned counsel. Perused the impugned order passed below Exh.92. While passing the order, the trial court has observed that the petitioner has filed an application for recalling of witness under Section 311 of Cr.P.C. The trial court has further observed that it is not necessary to examine the witness, as the memo of the cheque shows dishonour of cheque due to “insufficient funds” and not “stop payment”. On this and other grounds, the trial court has rejected the application filed by the petitioner. In my view, the trial court has not considered that the application filed by the petitioner was not under Section 311 of

Cr.P.C.. The petitioner had not filed the application for re-examining the witness but it was filed for examining the witness in support of his contention. The petitioner is accused before the trial court and he has right to examine the witness in support of his contention. But this fact is not considered by the trial court. Considering the above reasons, I pass the following order:-

O R D E R

- I. The writ petition is allowed.
- II. The order dated 10.10.2023 passed by the Judicial Magistrate, First Class, Udgir, below Exh.92 in S.C.C. No. 560 of 2016 is quashed and set aside. The petitioner is permitted to examine the Branch Manager, as mentioned in application Exh.92, as a witness.

(SHIVKUMAR DIGE, J.)

rlj/