

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1289 OF 2024

Vilas Ramrao Walakate

Age : 53 years, Occu : Business,

R/o : Bhagwan Nagar, Ambejogai Road,

Latur.

..Petitioner

VERSUS

Mr. Suresh Siddhlingappa Wadkar

Age : 68 years, Occu : Retired,

R/o : Near Amba Hanuman Mandir,

Ambejogai Road, Latur.

..Respondent

...

Advocate for the Petitioner : Mr. Bhandari Anand P.

Advocate for Respondent : Ms. Sundale Rakhi Virbhadra

...

CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 05, 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The petitioner, who was an accused in the complaint case under Section 138 of the Negotiable Instruments Act has impugned the orders of the learned Judicial Magistrate First Class, Latur below Exhibit-135 passed in STCC No.2138 of 2018 dated 15.03.2024 rejecting his prayer to sent the cheques in dispute and the agreement Exhibit-62 to the handwriting expert and the order of the learned

Additional Sessions Judge, Latur in Criminal Revision Petition No.30 of 2024 dated 06.05.2024.

3. The learned Judicial Magistrate by the impugned order dismissed the application. Against that order, the revision was preferred before the learned Additional Sessions Judge. The learned Revisional Court discussing the law laid down by the Hon'ble Supreme Court in the case of Kalyani Baskar Vs. M.S. Sampooram, SC, Criminal Appeal No.1203 of 2006 (Arising out of S.L.P. (Cri.) No.2639 of 2004 decided on 11.12.2006 held that the accused is entitled to rebut the case of the respondent. Recording the findings of the fact, the Court dismissed the petition.

4. Learned counsel for the petitioner has tried his level best to convince the Court that it is essential to send the document mentioned above to the handwriting expert for comparing his signatures to prove its genuineness. He also vehemently argued that this is the defence available with the petitioner to rebut the presumptions running against him under the Negotiable Instruments Act. He referred to the impugned orders and argued that both orders are against the provisions of law. The defence of the petitioner/accused cannot be curtailed. The reasons mentioned for curtailing his right to rebut the presumption are illegal, incorrect and improper.

5. The Court has gone through Exhibit-135 on which the learned Judicial Magistrate as well as the Revisional Court has passed the order. The very first paragraph of the application shows that the cheques bearing Exhibit Nos. 77 and 79 were handed over to one Dr. Sidram Dongarge and Trimbak Savle as a security against the loan raised by him. However, those cheques have been misused and false complaint case is filed. The admission of the petitioner that he had issued the cheque to the third party itself is a evidence that those cheques bears his signature. In addition to his signature, he has raised an objection against the contents of the cheque. He states that the ink of the contents of the cheque differs from the ink of the signature. Section 20 of the Negotiable Instruments Act speaks on issuance of the blank cheque. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and 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, for any amount specified therein and not exceeding the amount covered by the stamp. The plain reading of Section 20 reveals that the person if signs and delivers the cheques either wholly or partly filled up, is deemed to authorize that person to fill up the contents of the cheque to make the instrument complete. The petitioner nowhere pleaded in

the application Exhibit-135 that whether the cheques were delivered blank or written by him or third person. So, this deemed provision of Section 20 would bar him denying the delivery of the cheques. It is by way of defence, he contended that the cheques were delivered not issued to the complainant but to the third party. So far as document Exhibit-62 is concerned, it is a notarized document. It was typed written and also bears the signature of the petitioner. However, he denied the signature below Exhibit-67.

6. Section 73 of the Indian Evidence Act provides for the comparison of signature, writing or seal with others admitted or proved document. It gives the power to the Court to compare such two documents. The Court may compare the documents with one which is proved or admitted. Though the petitioner had denied the signature below Exhibit-77, those proved false. Those were the signatures which the petitioner cannot deny. Besides, the bank officer was examined to prove the signature. He compared the signature with sample signatures given by the petitioner while opening the bank account. There was ample evidence on record to compare the signature below Exhibit-62. Besides this, the notary was also examined who has also proved his signature. However, the law is settled that the Court should be slow to compare the disputed document with the admitted document for comparison although Section 73 empowers the Court. Although section 73 specifically

empowers the Court to compare the disputed writings with the specimen/admitted writings shown to be genuine, prudence demands that the Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard. It is yet to be done by the Trial Court.

7. Reading the facts and above provisions, this Court is of the view that sufficient evidence was produced before the Court. The documents executed before the notary public has some weightage. The notary also proved his signature. So, it cannot be said that the evidence as regards the signature is of no high standard. This may be an attempt to protract the trial. The Court should consider the pains of the other side. In most of the cases under Section 138 of Negotiable Instruments Act, the matters are protracted and at the fag end such applications are filed. The Court does not mean to say that the concerned person has no right to file such an application, it may be filed anytime. But the conduct could not be ignored. The document Exhibit-62 was the typed written document. Therefore, its contents cannot be compared. Prima facie, there was material before the Court to reject the prayer and this Court does not find any illegality and perversity in the impugned orders. Hence, the petition stands dismissed. No order as to costs.

(6)

8. Rule stands discharged.

(S.G. MEHARE, J.)