



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

CRIMINAL WRIT PETITION NO.483 OF 2024

Sangita W/o. Sharad Kharatkar and another .vs. Amit S/o. Prakash Fulzele

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr Rohan Bhishikar, Adv. h/f. Mr N. R. Bhishikar, Advocate for the petitioners
Ms Paunikar, Adv. h/f. Mr S. V. Sirpurkar, Advocate for the respondent

CORAM : G.A. SANAP J.

DATE : NOVEMBER 13, 2024

Heard learned Advocates for the parties.

2. In this writ petition, the petitioners, who are the accused in a criminal case, have challenged the order dated 30.03.2024, passed by the learned Additional Sessions Judge, Warora, whereby the learned Judge was pleased to dismissed the revision application filed by the petitioners against the order dated 04.01.2024 passed by the learned Additional Chief Judicial Magistrate, Warora. The learned Additional Chief Judicial Magistrate Warora by order dated 04.01.2024 rejected the application (Exh. 41) made by the petitioners for referring the disputed handwriting to the handwriting expert for opinion.

3. The respondent has filed the complaint against the petitioners under Section 138 of the Negotiable Instruments Act, 1881. The cheque in question is dated 11.01.2021. The cheque was drawn by the petitioners on the account maintained with the Bank of India, Bhadrawati Branch. The

cheque was dishonored, when presented for encashment. The notice was issued by the respondent to the petitioners. It is the case of the respondent that petitioners refused to accept the notice. The respondent, therefore, filed complaint against the petitioners. The learned Magistrate issued the process against the petitioners. The petitioners appeared before the Magistrate. The evidence of the respondent/complainant is over.

4. It appears to be the defence of the petitioners that they had repaid the entire amount. The blank cheque was subsequently misused by the respondent. The petitioners, during the cross-examination of the respondent, confronted him with the unsigned statement of the account purportedly in the handwriting of the respondent. The respondent has denied the said document. The petitioners, therefore, made the application for referring the said handwriting as well as the handwriting on cheque to the handwriting expert for opinion. The respondent opposed the said application. The learned Magistrate vide order dated 04.01.2024 rejected the said application. The revision preferred was also rejected by holding that it was not maintainable.

5. I have heard the learned Advocate for the petitioners and learned Advocate for the respondent.

6. Undisputedly, till completion of the evidence of the respondent, the application was not made for referring any

handwriting or any document to the handwriting expert. Similarly, the petitioner No.1 has not denied her signature on the cheque. Notice was not accepted. The defence disclosed by the petitioners with regard to the repayment of the amount was *put forth* for the first time in the cross-examination. It is further undisputed that the documents/handwriting sought to be referred to the handwriting expert was not signed by the respondent. It is apparent on the face of the record that there is no dispute with regard to the signature of the petitioner No.1 on the cheque. The dispute is with regard to the filling up of the other contents of the cheque.

7. The learned Magistrate has observed in his order that this application was nothing but an attempt to delay the trial. The learned Magistrate has recorded the reasons to reject the prayer made by the petitioners. The respondent has already denied the said document at the stage of his cross-examination. It is to be noted that the grievance made by the petitioners needs to be appreciated in the teeth of the undisputed facts. In my view, the attempt made by the petitioners seems to be to protract the complaint. The material on record does not support either the contentions or conduct of the petitioners. The case is now posted for recording the evidence of the petitioner. Since, the petitioner No.1 has admitted her signature on cheque, the Court is required to consider the issue as to whether the presumption in the case would trigger against the petitioners and the

evidence adduced by the petitioners to rebut the presumption. On going through the record I am satisfied that there was an attempt on the part of the petitioners to delay the trial. The application made for referring the document was not *bona fide* application.

8. The learned Advocate in support of his contention has relied upon the decision in the case of *Sharad S/o. Balasaheb Sangle .v/s. Deepak S/o. Manohar Newse and another*, reported in, *2014 (5) Mh.L.J.535*. In this case, the signature on the cheque was disputed. Similarly the handwriting on the cheque was also disputed. In the facts of the case the Co-ordinate Bench has held that since the signature and the handwriting is disputed it would be necessary to refer the document to the handwriting expert. In this case, the signature has been admitted. The document sought to sent to the handwriting expert is unsigned statement of the account purportedly prepared by the respondent. In my view, by relying on this judgment, the learned Advocate is not able to make good his submission. In the facts and circumstances, I do not see any substance in the petition.

9. The writ petition is accordingly **dismissed**.

(G. A. SANAP, J)