



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

CRIMINAL WRIT PETITION NO.545 OF 2024

Devendra S/o. Vinayakrao Gorle

.vs.

Sanjaykumar S/o. Omprakash Dagan

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

Mr Anup Dangore, Advocates for the petitioner
Mr T. A. Mirza, Advocate for respondent

CORAM : G.A. SANAP J.

DATE : DECEMBER 11, 2024

Heard learned Advocates for the parties.
Perused the record and proceedings.

2. In this writ petition, challenge is to the order dated 29.02.2024 passed by the learned 16th Jt. Civil Judge Senior Division and Additional Chief Judicial Magistrate First Class, Nagpur (for short 'the learned Judge') whereby, the learned Judge rejected the application made by the petitioner/accused for sending the disputed cheque to the handwriting expert for opinion.

3. It is the contention of the petitioner that the corrections in the date of the cheque were made by the complainant. The date mentioned in the cheque was

19.03.2006, but it was changed to 30.10.2006. It was done with an intention to bring the instrument within limitation.

4. The learned Judge, after granting an opportunity of hearing to the complainant, held that no case has been made out for sending the disputed cheque to the handwriting expert. On going through the impugned order and the attending facts and circumstances, I am of the opinion that the learned Judge did not commit any mistake or illegality. The complaint was filed in 2007. Before filing the complaint, the notice was issued. In the said notice, categorical statement was made that the initial date, namely '19.03.2006' was corrected by the accused to '30.10.2006'. The petitioner appeared before the learned Magistrate in 2007. The complainant filed his affidavit of examination-in-chief in 2009. The complainant pleaded in the complaint that the initial date of the cheque was 19.03.2006 and it was changed to 30.10.2006 by accused. The application for sending the document to the handwriting expert was made on 06.06.2023. It is not the case of the accused that, when the cheque was filed in the Court by the complainant, at the stage of evidence, in 2023, he came to

know about the corrections made in the cheque.

5. In my view, the trial in such a matter must be fair to both parties. In this case, the accused, in his application, has not uttered a word about his failure to make the application for sending the cheque to the handwriting expert for an opinion from 2009. It is to be noted that while deciding such an application, the Court has to consider the *bona fides* of the parties. The complainant had not concealed anything. The complainant from the date of issuance of the notice reiterated that the correction was made in the date of the cheque by the accused. The accused was, therefore, required to explain the delay in making such an application. The witness No.1, examined by the complainant, is under cross-examination. In my view, on the ground of delay itself, the learned Magistrate was justified in rejecting the application. The *mala fides* of the accused behind this application are writ large. In the absence of an acceptable explanation for such a long delay at this stage, the contention of the accused for referring the document for the opinion of the handwriting expert cannot be entertained. On going through the order passed by the learned Judge I am satisfied that the learned

Judge has not committed any mistake. The order is in accordance with the law. As such, I do not see any substance in the submissions. Hence, the petition stands **dismissed**.

6. It is made clear that the observations made in this order are for the purpose of deciding the writ petition and the learned Judge shall not in any manner get influenced by this while deciding the main case on merits.

7. The hearing of the complaint is expedited.

8. Accordingly, the writ petition stands **disposed of**. Pending applications, if any, also stand disposed of.

(G. A. SANAP, J)

Namrata