



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

8 CRIMINAL WRIT PETITION NO. 256 OF 2025

SANKET AGASTI TUPE

VERSUS

NANDKISHOR KARABSAPPA CHINCHOLE

....

Mr. Pralhad D. Bachate, Advocate for the Petitioner

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 03.03.2025

PER COURT :-

1. Heard Mr. Bachate, the learned counsel for the Petitioner, at length.

2. The Petitioner invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023, challenging the legality and validity of the order dated 17.01.2025 passed by the learned Additional Chief Judicial Magistrate, Omerga below Exh.50 in S.C.C. No.366 of 2017, whereby the learned Magistrate refused to refer the cheque in question to the handwriting expert.

3. The learned counsel for the Petitioner invited my attention to paras 4 and 5 of cross-examination of the Respondent/original complainant. In cross-examination, it is brought on record that, in the month of July 2016, two cheques for an amount of Rs.5,00,000/- (Rupees Five Lakh) and Rs.7,00,000/- (Rupees Seven Lakh), were issued by Rupesh and Sanket (present Petitioner) and after cheques were bounced, the written notice was not issued. So also, no receipt was issued for cancellation of sale transaction of the plot and after revocation of said agreement, a cheque of Rs.12,00,000/- (Rupees Twelve Lakh) was issued in favour of the complainant. Further, suggestion given that the signature of complainant is appearing on cheque but the said suggestion was denied. It was brought out in cross-examination that, the complainant showed his readiness to refer the instrument and bank deposit slip to handwriting expert for examination.

4. Thereafter, the Petitioner/accused filed Exh.50 application for referring the instrument for examination to the handwriting expert. However, on 17.01.2025, the learned Additional Chief Judicial Magistrate, Omerga, passed the impugned order and rejected the said application considering the ratio laid down in the

case of *Amitabha Sengupta Vs. Atanu Banik, LAWS (TRIP) – 2023-8-10* and in the case of *G. Someshwar Rao Vs. Samineni Nageshwar Rao, Criminal Appeal No.1353 of 2009 LAWS (SC) 2009-7-157*.

5. Mr. Bachate, the learned counsel for the Petitioner relied on the case of *Kalyani Baskar Vs. M. S. Sampornam, LAWS(SC)-2006-12-1*, wherein the Hon'ble Supreme Court held in paragraph 10, as under:-

*“10. Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of*

*procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.PC. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.PC. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.”*

6. In the case at hand, the Petitioner/ accused has not denied his signature on instrument which is subject matter of the complaint. It is also not the defense of the Petitioner/accused that he had handed over blank cheque under his signature to the Respondent/ complainant. Since the Petitioner/accused has not denied his signature on the instrument and has not raised a defense about tampering with the figures, writing on the cheque, or any material alteration in handwriting, therefore, no question arises for referring the instrument for examination to the handwriting expert.

7. Section 139 of the Negotiable Instruments Act provides a rebuttable presumption, unless the contrary is proved that the holder of the cheque received the cheque of the nature referred in Section 138 for the discharge, in whole or in part, of a debt or other liability. Therefore, the presumption lies in favour of the Respondent/complainant. It is a settled principal of law that, merely because the Petitioner/accused has requested that the instrument be referred for examination by a handwriting expert, it is not necessary for the Judicial Magistrate to do so. Therefore, I do not find any substance in the present petition, hence, the Writ Petition is dismissed.

**[ Y. G. KHOBRAGADE, J. ]**

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