



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

14 CRIMINAL APPLICATION NO. 1702 OF 2025

MS AMAZING SOFTWARE AGENCY THROUGH PROP. SAMEER GANPATI
PADWAL

VERSUS

VENKAT MAROTIRAO NAIKWADE AND ANOTHER

Mr. Amit A. Yadkikar, Advocate for the applicant.

Ms. Chaitali Choudhari Kutti, APP for the respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 11.08.2025

PC :-

01. This matter was heard extensively on 08.08.2025 and was kept for taking instructions.

02. The order under challenge is an order passed by the learned Additional Sessions Judge-3, Latur dated 09.09.2024 rejecting an application of the present applicant/accused filed under section 391 of the Cr.P.C. The accused is convicted by the learned JMFC Court No.2, Latur for the offence punishable under section 138 of the Negotiable Instruments Act by judgment and order dated 30.01.2019. The accused filed appeal bearing Criminal Appeal No.17 of 2019 before the learned Sessions Court, Latur. In the appeal, he filed an application for permission to produce on record additional evidence and for sending

documents (Exh.27 and Exh.8) to handwriting expert. It is case of the accused/applicant that the handwriting on the cheque as well as on the summons appears to be of the same person and thus the cheque is written by the some other person, who has also written the contents in the summons. This shows that the the handwriting on the cheque is not of the accused. Therefore, prayer is made to send both these exhibits to handwriting expert along with specimen handwriting of the applicant/accused. This application came to be rejected by the Sessions Judge. The accused is thus before this Court.

03. Learned Advocate for the applicant submits that it is necessary to send the documents to handwriting expert as it will show that the cheque is not written by the accused himself and is written by some one else. The learned Sessions Judge has committed illegality by rejecting the application. The learned Sessions Court has power under section 391 of the Cr.P.C. to take on record additional evidence. He submits by relying upon judgment of the Hon'ble Supreme Court in the case of **Asim Solanki Vs. The State of Gujrat** dated 28.01.2020. Said application was opposed by the complainant on the ground that no such defence was taken in the Trial Court. The application is moved only to prolong the matter.

04. Learned Sessions Judge observed that the accused was given sufficient opportunity to lead his evidence. As many as three witnesses were examined by the accused. The alleged cheque is of the year 2011. So far as the case-law is concerned, the learned Sessions Court observed that it is not applicable, as in that case the trial was under section 302 of the IPC.

05. This Court has heard the applicant and has gone through the order passed by the learned Sessions Court. It does appear that in the Trial Court, it is not the defence of the accused that he did not issue cheque. The signature on the cheque is also not disputed. When there is no dispute raised and such defence is not taken in the Trial Court, now it would not be proper to send the documents to handwriting expert. The Trial is of the year 2012 decided in the year 2019. The appeal is preferred in the year 2019. The application Exh.46 is filed for the first time on 03.03.2022. Thus, said application is filed after three years of filing of the appeal. It is certainly afterthought defence. Under the NI Act, mere signing of the cheque by the accused is sufficient. There is also presumption under section 20 of the NI Act.

06. In the present case, this Court is not satisfied by the submissions of the applicant. This Court does not find any substance in the application. This Criminal Application is dismissed with no order as to costs.

[KISHORE C. SANT, J.]