

(2006) 10 BOM CK 0026

In the Bombay High Court

Case No : Criminal Application No. 2667 of 2006

Saheb Khan Noor Khan Pathan

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 1 CivCC 231 : (2007) 4 RCR(Civil) 601 : (2007) 4 RCR(Criminal) 852

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : S.S. Thombre, for the Appellant; R.M. Shinde, Assistant Public Prosecutor with Mr. S.S. Shinde, for the Opposite Parties, for the Respondent

Final Decision : Allowed

Judgement

J.H. Bhatia, J.—Rule. Rule made returnable forthwith. With consent of the learned counsel for the parties, the matter is taken up immediately for final hearing.

2. The Respondent No.2 filed a complaint u/s. 138 of Negotiable Instruments Act, against the present applicant alleging that he had issued a cheque of Rs.70,000/- which was dishonoured on presentation, Thereafter, notice was issued to the applicant but he had failed to make payment. According to the applicant, his cheque book was with Respondent No.2 who was pigmy agent for different banks and later on he found that the last cheque of that cheque book was removed by the Respondent No.2, while returning that cheque book to him. In the reply notice he alleged that Respondent No.2 might have obtained his signature fraudulently. Initially the Respondent No.2 himself had made an application before the Magistrate to refer the disputed cheque for handwriting expert's report. The applicant had also given no objection to the same. However, later on Respondent No.2 did not press that application. Evidence for both the sides were

recorded. After recording of evidence of the Bank Manager as defence witness, the present applicant made an application to refer the disputed cheque to handwriting expert for comparison of, signature thereon. That application was opposed by the Respondent No.2 and was rejected by the Magistrate. Revision Application was also rejected. Therefore, the petitioner has come before this Court u/s.482 Cr.P.C.

3. Heard learned counsel for the parties and peruse the record.

4. It appears that in the reply notice itself the present applicant had disputed that he had issued any cheque to the Respondent No.2. He denied his signature even during the evidence and in fact, he examined the Bank Manager as a defence witness to prove that the signature of the disputed cheque was not his signature. However, Bank Manager admitted that the disputed signature appears to be similar to the specimen signature. The learned Magistrate came to the conclusion that the Bank Manager is also an expert in comparison of signatures and therefore, his evidence is acceptable and it is not necessary to refer the document to the handwriting expert. Even though the Bank Manager is by training and practice experienced to compare the signatures, still he cannot be called as handwriting expert with necessary expertise. In the present matter huge amount of Rs.70,000/- is involved. The applicant appears to be small shop keeper. Taking into, consideration the stake, I find that it will be in the interest of justice to allow the application and to refer the document to handwriting expert. Mr. Shinde, learned counsel for Respondent No.2 relied upon *Inderchand Khivisar Vs. Gokul Patil and Another*, in support of his contention that the disputed document cannot be referred to handwriting expert. The said authority is not applicable to the present case, In that case there was no dispute about the signature at any stage and only at late stage to protract the litigation, the application was made to refer the document to the expert. In the present case the genuineness of the signature on the document was disputed since beginning, in fact even before filing of the complaint itself and that is why at the stage Respondent No.2 himself wanted the disputed document to be referred to handwriting expert. The matter is not very old. The complaint is filed in September 2004 only. The necessary application was moved by the applicant on 15.09.2005 i.e. within few days after the Respondent No.2 had not pressed his own application dated 18.07.2005. Therefore, it can not be said that the attempt is being made to protract the litigation.

5. In view of the above circumstances, I find that the Courts below failed to appreciate the facts and circumstances properly before rejecting the prayer of the present applicant. In my opinion, to secure the ends of justice, it is necessary to interfere u/s.482 Cr.P.C.

6. The application is hereby allowed. The impugned order passed by J.M.F.C, Kaij in S.S.C.737/2004 and the order passed by Additional Sessions Judge Ambajogai, in Criminal Revision Petition No.69/2005 are hereby quashed and set aside. The applicant shall pay necessary charges of the handwriting expert and in

case he succeeds in proving that the cheque does not bear his signature, the charges shall be recovered from the complainant/Respondent No.2. The Trial Court shall dispose of the matter as early as possible after obtaining the report of the hand writing expert.