

ORDER BELOW EXH.322 IN SCC 338/2006
(MHAH190004042020)

01. Circumstances under which the present application is filed are as under :-

02. Complainant filed complaint against accused for the offence punishable under Section 138 of Negotiable Instrument Act alleging accused executed agreement to sale in favour of complainant on 26/01/2004 but failed to execute the same, therefore in order to refund earnest money received in the said agreement on demand issued cheque dated 24/12/2005 and the same dishonored, notice issued as per Section 138 of N.I. Act and on failure to pay the cheque amount within statutory period filed this complaint.

03. On summons accused appeared, pleaded not guilty and thereafter complainant examined as many as 11 witnesses in support of his case and accused in his statement under Section 313 of Cr.P.C., filed separate written statement at Exh.169 and also examined himself at Exh. 236.

04. Accused in his defence and written statement at Exh.169 as per para 5 take a defence that accused issued four blank signed cheque for the purpose of marriage of complainant's son. (i.e. for marriage of complainant) but complainant misused the said cheque. It also mentioned in para 6 that accused issued the said blank signed cheque in the presence of Shri. Bade and Shri. Nemanee and was

instructed only to fill Rs.25,000/- per cheque periodically.

05. Accused deposed at Exh.236 contending that complainant's father was working as Supply Inspector at Shevgaon and as accused dealing in retail Kerosene seller, in order to renew his license, given a blank signed stamp paper to the complainant father on 25/03/2004 on which he falsely endorsed agreement to sale. Accused further deposed that complainant father in May-2004 demanded money to the accused for his son's marriage and therefore accused given four blank signed cheque to him and asked to get encash by filling amount Rs.20,000/-, Rs.30,0000/- as per his instruction. But, in that year, complainant marriage not took place and complainant misused two blank signed cheque out of four. One of which in the name of complainant and one for Rs.5,00,000/- (Rupees Five Lakh) in the name of complainant's father. Accused further deposed that he replied to the notice of complainant and stated about the four blank signed cheque.

06. After accused examined himself filed application at Exh.242. Which was rejected on 09/07/2015. Being aggrieved by the said order accused approached to the Hon'ble High Court by filing Criminal Application No.3795/2015 in which their Lordship by order dated 06/04/2016, quashed and set aside the said order and also expected that handwriting report will be filed within 8 weeks.

07. Thereafter my learned Predecessor passed order below Exh.273 on 27/05/2016 and refereed the disputed cheque to expert.

08. Accused prayer in application at Exh.242 is as under :-

मजकूर केसमध्ये नि.२७ वरील धनादेशावरील लिहीलेली तारीख, नाव, अक्षरी रक्कम व अंकी रक्कम इ. चे हस्ताक्षर व फिर्यादीचे जनरल मुखत्यार प्रकाश अंबादास कुलकर्णी यांचे हस्ताक्षराचे नमुने, तसेच आरोपीचे व इतर स्वस्त धान्य दुकान व रॉकेल दुकानदार यांची तपासणी करतांना प्रकाश अंबादास कुलकर्णी यांनी व्हिजीट बुकवर व दुकानचा फार्म भरतांना केलेल्या स्वतःचे हस्ताक्षरातील नोंदी, व धनादेशावरील हस्ताक्षर हे एकच असल्याबाबत " हस्ताक्षर तज्ञ" यांचेकडे सदरचा धनादेश नमुने व कागदपत्र मे. कोर्टामार्फत पाठवण्याचा हुकूम व्हावा व त्यावर अहवाल " इन दि इंट्रेस्ट ऑफ जस्टीस" मागवण्यात यावा, आरोपी त्यासाठी होनारा सर्व खर्च करनेस तयार आहे.

09. Accused prayer at Exh.273 is as under :-

मे. कोर्टास नम्र विनंती की, मे. उच्च न्यायालयाचे हुकूमाप्रमाणे धनादेशाचे दस्तऐवजाची तपासणी करत असतांना त्या सोबत धनादेशावरील सहीचे वय व नमूद तारीख आणि हस्तलिखित मजकूर व रकमेच्या वयामधील तफावतीची तपासणी करून अहवाल देण्याचा आदेश व्हावा.

10. Thereafter, handwriting expert submitted his report at Exh.303. Dissatisfied with the said report accused called him as defence witness. Who deposed at Exh.320.

11. Thereafter accused again filed this application for referring disputed cheque to the expert. On which complainant strongly resisted by filing say at Exh.323.

12. Heard learned advocate for accused Shri. T. A. Pathan. He submitted that in the interest of justice application is required to be allowed otherwise it will be contempt of order of Honble High Court passed in Criminal Application No.3795/2015.

13. Power of attorney holder on behalf of complainant i.e.

father of complainant argued that accused adopting delayed practice to prolong the case by hooks and crooks.

14. Perused record.

15. In above facts, it is clear that accused replied to the notice issued to him as per provision of Negotiable Instrument Act, in which he took defence that complainant father misused two blank signed cheque out of four by filing two complaints under Section 138 of N.I.Act one in the name of complainant's father and second in the name of complainant. In this facts, on query, it comes to my knowledge that in one case lodged by complainants father, accused held guilty by trial Court in SCC No.145/2006 which has been partly allowed by modifying sentence in Revisional Court in Criminal Revision No.273/2012. As well as Hon'ble High Court in Criminal Writ Petition No.700/2016 substitute the order of Revisional Court by awarding compensation to the complainant as well as Hon'ble Supreme Court also in Special Leave to Appeal No.1518-1520/2017 on 27/02/2017 dismissed accused petition.

16. In above fact, it is clear that accused defence that he had issued four blank signed cheque to the complainant father was not accepted up to the Hon'ble Supreme Court. In the present case also, the defence was same as was in the SCC No.145/2006 therefore the present application is nothing, but to prolong the proceeding.

17. Secondly, looking to the prayer Exh.242 and 273, entirely both prayer are different. In fact Hon'ble High Court in

Criminal Application No.3795/2015, set aside order below Exh.242 but it seems that by taking advantage of the fact of setting aside Exh.242, deliberately after thought with modified prayer, filed application Exh.273 and get it allowed. Therefore, I am of the view that what was prayed at Exh.242 is satisfied by expert deposition Exh.320

18. For aforesaid reasons, I am of the view that the present application of accused is nothing but to prolong the proceeding by hooks and crooks. Therefore, not justified. Hence, I pass the following order.

ORDER

- (1) Application is hereby rejected.
- (2) Case proceed on next stage.

Date: 11/03/2020
Place : Shevgaon

Sd/...
(Shrikant Ade)
Jt. Judicial Magistrate First Class,
Shevgaon.