

Order below Exh.34 in SCC No.1002/2019.

1. The accused has filed this application for taking legal action against the complainant and his advocate.
2. It is the contention of the accused that he is from middle class family. He is a graduate doing the business of essence sticks. The charges levelled against him are illegal and he denies the same. The complainant and his advocate have prepared false document with the help of money. There is a overwriting or tampering in the notice sent by the complainant, which is illegal. So also, there is also overwriting of tampering in the cheque. In that respect, he has already filed an application on 18.02.2022, but no action was taken. On the contrary, the advocate has used pressure tactics. The financial condition of the accused is not good. Hence, he himself is contesting this case in person. The complainant is taking disadvantage of this fact.
3. Thus, it is contention of the accused that the case was filed by making overwriting or tampering in the Government document. Thus, he prayed for legal action against the complainant and his advocate.
4. The complainant has filed his say below Exh.37 and denied the contents of the application. It is his contention that the application is false and causing defamation of advocate. The accused has protracted the matter despite the opportunities given to him. The accused has earlier filed the defamatory application on 18.02.2022. No cause of action occurred for filing present application.
5. In the present case, the evidence of complainant is completed. Accordingly, he has filed the pursis. The matter is at the final stage. The accused has made false and defamatory statement. Thus, they have prayed the legal action against the accused.

6. Heard both sides.

7. It is the contention of the accused that the complainant and his advocate have tampered and made overwriting in the cheque and notice and hence, he has prayed the legal action be taken against them. In order to initiate the legal action against a person, he should be proved and held guilty at the time of final hearing and he should be held guilty in the judgment. But in the present case, the matter is pending for the evidence of the accused. The stage of judgment is yet to come. Hence, this application is premature. Accordingly, I proceed to pass the following order:-

ORDER

Application below Exh.34 is hereby rejected.

Date :- 18/03/2023.
Place :- Yeola.

(M. S. Ligade)
Judicial Magistrate, First Class,
Yeola, Dist. Nashik.

Order below Exh.39 in SCC No.1002/2019.

1. The accused has filed this application for verification of cheque and notice.
2. It is the contention of the accused that his case No. is SCC 1002/2019. The complainant and his advocate have filed this case by making overwriting or tampering in cheque and notice. Thus, the accused has prayed for verification of the cheque and the notice of the complainant.
3. The complainant has filed his say below Exh.40 and denied the contents of the application. It is his contention that the application is false, illegal and making contempt of judicial process. The evidence of the complainant is completed on 04.01.2022. The accused himself has cross-examined the complainant below Exh.13. Thereafter, time to time the accused was given opportunity to lead evidence. But he has failed to lead his evidence. On the contrary, the accused has filed false application and levelled serious allegations against the complainant and his advocate.
4. The complainant has filed his say below Exh.37 and demanded legal action against the accused. The court has also given oral instruction to the accused. Despite that, the accused has filed this defamatory application against them which is a serious thing. Thus, he has prayed for rejection of application and serious action against accused.
5. Heard both sides.
6. It is the contention of the accused that there is a overwriting or entry in the notice of the complainant. In order to substantiate his contention, the accused has filed the xerox copy of registered notice dated 05.11.2019. I have gone through it. The said notice was given by the advocate of the complainant to the accused.

7. I have gone through the said notice. It seems that there is a overwriting in the month of date of cheque, i.e. 05.12.2019 and 15.12.2019 mentioned in the notice. The complainant has examined himself below Exh.13. During his examination-in-chief the notice of the complainant was exhibited as Exh.20. The contents of the notice filed below Exh.20 and the notice filed by the accused below Exh.32 are same and identical.

8. The accused has given reply to the notice of the complainant on 18.11.2019 which shows that the accused has received the notice of the complainant. Further, the complainant has also filed the acknowledgement receipt below Exh.22. The reply notice of accused shows that he has received the notice of complainant. The overwriting mentioned in the notice filed by the accused is also present in the notice filed by the complainant below Exh.20. Thus, the overwriting was made before issuing the notice. The overwriting in the notice filed by the accused below list Exh.32 shows that the overwriting was made before the accused has received the notice. Thus, it is clear that before sending the notice, both the notices i.e. the notice filed by the complainant Exh. 20 and the notice filed by accused below list Exh.32 were made before issuance of the notice to the accused. Both the notices contain the same overwriting at same place, which shows that the overwriting was made before issuing notice to the accused. It is not the case of the accused that there is no correction in his notice and subsequently the corrected notice was filed in the court. It seems that the correction was made before issuing the notice to the accused.

9. Further, it is the contention of the accused that there is tampering in the cheque. The complainant has filed this case in respect of three cheques given by the accused. But it is not mentioned in the application

in which cheque there is a tampering.

10. The complainant has filed his affidavit of evidence below Exh.13. During his examination-in-chief, the documents of the complainant were exhibited. Thereafter, the accused himself has cross-examined the complainant. In cross-examination, the accused has asked the question to which the complainant has given answer and both the question and answer are specifically recorded as follows:-

प्रश्न:- दोन्ही रक्कमा मिळून रुपये ७०,०००/-, होतात, तर चेकची रक्कम ६५,०००/- कशी?

उत्तर:- रक्कम रुपये ६५,०००/- चे चेक दिले होते, उर्वरित रक्कम रोखीने देण्याचे ठरले होते.

Thus, in cross-examination, the accused himself has brought on record that he has given the cheques of Rs.65,000/- to the complainant. Further, in his cross-examination, the complainant has denied that he has filed the cheque No. 000006 in the bank after its validity period. Further, the complainant has denied in his cross-examination that he has filed the cheque No. 000003 in the bank after its validity period. Further, he has denied that cheque No.000007 was given for personal use i.e. to deposit the premium of policy and it was misused. Thus, the cross-examination of the complainant shows that the accused has admitted the execution of the cheque and hence, if the execution of the cheque is admitted, it is not necessary to verify the cheque.

11. Further, the accused has filed the reply notice send by him to the complainant. In said reply notice, it is mentioned that the accused has kept the cheque book and other documents in the shop of the complainant. Thus, he has admitted that he has handed over the cheque to the complainant.

12. Thus, the cross-examination of the complainant shows that the

accused has admitted the execution of the cheque and hence, if the execution is admitted, it is not necessary to verify the cheque. Accordingly, I proceed to pass the following order:-

ORDER

Application below Exh.39 is rejected.

Date :- 18/03/2023.
Place :- Yeola.

(M. S. Ligade)
Judicial Magistrate, First Class,
Yeola, Dist. Nashik.

CERTIFICATE

I affirm that the contents of this PDF file Order / judgment are same, word to word, as per the original order / judgment.

Name of Stenographer : P.A. Bargal, (L.G. Stenographer)

Name of the Court : Shri. M. S. Ligade, JMFC,
Yeola, Dist. Nashik.

Date of Order / judgment : 18.03.2023.

Order / judgment signed by

Presiding officer on : 18.03.2023.

Order / judgment uploaded on : 18.03.2023.