

**Ankush Vs. the State of Maharashtra and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/1144914](http://sooperkanoon.com/1144914)

**Court :** Mumbai Aurangabad

**Decided On :** Jan-30-2014

**Judge :** Abhay M. Thipsay

**Appeal No. :** Criminal Writ Petition No. 1016 of 2013

**Appellant :** Ankush

**Respondent :** The State of Maharashtra and Another

**Judgement :**

Oral Judgment:

1. Heard Mr. C.V. Dharurkar, the learned Counsel for the petitioner. Heard Mr. P.P. More, the learned Additional Public Prosecutor for the respondent no.1. Heard Mr. S.J. Salunke, the learned Counsel for the respondent no.2.

2. Rule. By consent, Rule made returnable forthwith. The learned Counsel for the respondent no.2 waives service. By consent, heard finally.

3. The petitioner is the accused in S.C.C. No. 328/2007, pending before the Judicial Magistrate (First Class), Beed. The said case is in respect of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The respondent no.2 herein, a Cooperative Bank, is the complainant in the said case. The trial is in progress. The evidence of the complainant has been adduced. The petitioner (hereinafter referred to as "**the accused**") has been examined under the

provisions of Section 313 of the Code of Criminal Procedure, 1973 [For short, "**the Code**"]. After the petitioner was examined, he made an application (Exhibit 59), praying that the cheque in question be sent to the handwriting expert and also to an expert for asserting age of the ink.

The accused contended that the cheque had been given to the complainant - Society as and by way of security, as the petitioner had stood as guarantor for the loan taken by one Arjun Bhagat from the Bank. According to the petitioner, it was a blank signed cheque and that there was bound to be difference between the age of the ink of the signature and the ink in which the other matter was written. This application was opposed to by the complainant stating the accused had not disputed the signature on the cheque, that he had given the cheque to the complainant has also not been disputed, and that, therefore, for ascertaining the handwriting with respect to the remaining matter on the cheque, it was not necessary to send the cheque for any opinion as to the other writing on the cheque.

The Magistrate by his order dated 17-10-2013, rejected the said application primarily holding that since the accused had admitted his signature over disputed cheque, he had given an authority to the complainant to pay the debt and, therefore, no purpose would be served by sending the disputed cheque to the handwriting expert.

Being aggrieved thereby, the accused has approached this Court by filing the present petition invoking the inherent powers of this Court.

4. I have heard the learned respective Counsel for the parties. With the assistance of the learned Counsel for the parties, I have gone through the petition and the annexures thereto.

5. A perusal of the order passed by the Magistrate, inter alia, indicates that the possibility of the other writing on the cheque to be not of the accused, was clear to the mind of the Magistrate himself. He was, however, of the view that, that aspect was immaterial. Whether that aspect would be immaterial or not, would depend on facts of each case.

6. I find that in his examination under Section 313 of the Code, the accused has stated that he would examine himself on oath as a defence witness. The same statement is made by his Counsel before this Court. According to the accused, he stood as a guarantor for one Arjun Bhagat and on the date of filing of the complaint, the Bank had issued a 'no dues' certificate to the said debtor Arjun Bhagat.

7. These contentions cannot be examined in the present petition. However, it would be open for the accused to adduce evidence to that effect. After adducing the evidence, the accused should be permitted to apply afresh for sending the cheque to the handwriting expert and the expert for determination of the age of the ink, provided the relevancy of sending the cheque to such expert would be obvious in view of the stand and defence taken by the accused.

Since the accused can legitimately put forth his contentions and seek appropriate relief afresh from the Magistrate, after leading defence evidence, interference in the matter, at this stage, is not necessary. However, the learned Magistrate shall proceed further with the case expeditiously and in accordance with law.

8. The petition is disposed of in the aforesaid terms. Rule is made absolute accordingly.

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