

Bombay High Court

Smt. Kalpana W/O Dilip Patil vs Jijamata Mahila Nagri Sahakari ... on 9 January, 2015 Bench: S.B. Shukre

J-apl483.14.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) No.483 OF 2014

Smt. Kalpana w/o. Dilip Patil,

Age 42 years,
Occupation : Cultivator,
R/o. Makodi, Tq. Motala,
Distt. : Buldana.

: APPLICA

...VERSUS...

Jijamata Mahila Nagri Sahakari Bank
Ltd., Buldana, Branch Malkapur,
Mahavir Bhawan Complex, Malkapur,

through its Authorised Officer,
Krushna Mukundrao Kale,
Age 35 years,
Occupation : Service,

R/o. Malkapur, Distt. : Buldana.
=====

for the Applicant.

Mr. S.G. Kavimandan, Advocate for the Non-applicant.

: NON-AP
Mr. A.J. Thakkar, Advocate

CORAM : S.B. SHUKRE, J. th

DATE : 9 JANUARY, 2015.

ORAL JUDGMENT :

1. Heard.

2. Admit.

J-apl483.14.odt 2/7

3. Heard finally by consent.

4. By this application, the applicant is invoking Section 482 of the Criminal Procedure Code powers of this Court for referring the disputed document viz. cheque bearing No.682896 dated 25.11.2009, which was issued as per the case of the Non-applicant for satisfaction of the outstanding liability, to forensic laboratory for determination of age of the handwriting and also signature appearing thereon.
5. According to the applicant, this cheque was not issued by her towards satisfaction of the liability as the liability had already been discharged by her when there was an amicable settlement on 31.3.2005 reached with the respondent-Bank. She submits that at that time four post-dated cheques bearing Nos.682891 to 682895 were issued. She submits that the respondent-Bank had misused the cheque bearing No.682896 by entering an amount, which was not really due and payable by her to the respondent-Bank.
6. The applicant, in order to prove her defence, filed an application vide Exhibit-70 before the trial Court on 16.6.2014 for referring the disputed cheque to the forensic laboratory for determination of age of the handwriting and signature appearing J-apl483.14.odt 3/7 on the disputed cheque. This application was filed by the applicant after closure of the evidence of the complainant and recording of her statement under Section 313 of Cr.P.C. After hearing both sides, it was rejected by the learned Magistrate by his order passed on 30th June, 2014.
7. Being aggrieved by the same, the applicant is now before this Court in this application.
8. In support of the contention as to how the right of fair trial of the applicant has been affected due to rejection of her application vide Exh.-70 by the trial Court, learned counsel for the applicant has referred to the case of T. Nagappa vs. Y.R.

Muralidhar, reported in AIR 2008 SC 2010, wherein the Hon'ble Apex Court has held that when a contention has been raised that the complainant has misused the cheque, even in case where a presumption can be raised under Sections 118(a) or 139 of the Negotiable Instruments Act, 1881, an opportunity must be granted to the

accused for adducing evidence in rebuttal thereof. He submits that since the law places a burden upon the accused, he must be given an opportunity to discharge it. He submits that considering the specific defence taken by the applicant, the trial J-apl483.14.odt 4/7 Court ought to have referred the instrument for determination of age of the signature and handwriting to the forensic laboratory.

He also submits that facts of the case of T Nagappa are similar to the facts of the instant case and, therefore, the law laid down in the said case is squarely applicable to the present case.

9. According to the learned counsel for the Non-applicant, facts of the case of T Nagappa are entirely different inasmuch as no foundation for the defence sought to be taken by the applicant has been laid and this can be seen from the cross-examination of witness No.1/complainant and also from the answers given by the applicant in her statement recorded under Section 313 of Cr.P.C.
10. Upon considering the copy of the deposition of witness No.1/complainant, which was read out in open Court, by the learned counsel for the applicant, I find that the learned counsel for the Non-applicant is right when he submits that no foundation for the aforesaid defence has been laid by the complainant while cross-examining this witness. No suggestion has been given to this witness that the disputed instrument was issued by her not on 25.11.2009, but sometime in the year 2003 when the original cheque bearing No.682891 for Rs.4,17,000/- was issued by her as a J-apl483.14.odt 5/7 security for repayment of the loan. The dispute regarding original cheque No.862891 was amicably settled between the parties on 31.3.2005. Therefore, it was open to the applicant to take a defence that the disputed instrument in the instant matter was issued by her either in the year 2003 or in the year 2005 or sometime between 2005 and 2009. No such defence has been taken and, therefore, I do not understand as to how age of the handwriting and signature appearing on the disputed instrument would be relevant for defence.
11. No doubt, the accused being burdened with a criminal liability, has a right to defend in this case and, therefore, he must be given adequate and effective opportunity for proving his defence. If some document is required to be referred to forensic expert for determination of age of the handwriting and signature appearing thereon in order to prove the defence of the accused, it must be sent by the Court, no matter at what stage such a prayer is made. But, before doing that, it is also the duty of the Court to examine whether such an exercise would really help the accused or not. If no foundation for the defence sought to be taken by the accused has been laid previously by giving an appropriate suggestion in cross-examination to the witness of the prosecution J-apl483.14.odt 6/7 or the complainant, no purpose would be served by allowing such an application. In the instant case, I have already found that no foundation has been laid for the defence sought to be taken by the applicant, as seen from the cross-examination of the witness No.1 of the applicant taken on behalf of the applicant. That apart, even in the statement recorded under Section 313 of the Cr.P.C., the accused has not raised any defence to the effect that the disputed instrument was issued by her not in the year 2009, but some time in the year 2005 or between 2005 and 2009. These facts distinguish themselves from the facts of the case of T Nagappa, wherein, as seen from the observations of the Hon'ble Apex Court appearing in paragraph '3', the accused had taken a specific defence that the complainant had obtained a signed cheque from him in the year 1999 as a security for a hand loan of Rs.50,000/-, which had been paid back and which was later on misused by the complainant by showing the date of issuance of the cheque as 8.10.2004 and that was the reason why, the Hon'ble Apex Court found it necessary to allow the application for referring that cheque to a forensic expert, in order to give adequate and effective opportunity of defence

to the accused therein. Such not being the case here, in my respectful submission, the case of T Nagappa J-apl483.14.odt 7/7 would render no assistance to the applicant in this case.

12. In the result, I find neither any illegality nor any arbitrariness in the order impugned herein. The application, therefore, deserves to be rejected.
13. However, it is made clear that the observations made in this order shall not come in the way of the applicant putting forward her defence effectively before the trial Court and the trial Court shall not be influenced in any manner by these observations and shall decide the case on its own merit.
14. The application stands rejected.

JUDGE okMksns