

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRI. WRIT PETITION NO. 515 OF 2018

PETITIONER :-
(Ori. Accused)

Mittal s/o Sharad Kothari, Aged about 46 years, Occupation Service, R/o A-4, 1ST Floor, Balkrishna Apartment, Laxmi Nagar, Nagpur.

...**VERSUS**...

RESPONDENT :-
(Ori.Complainant)

Shree Kanyaka Nagari Sahakari Bank Limited, Chandrapur, having its Head Office at Raghuvanshi Complex, Bazar Ward, Chandrapur.

Mr. R. D. Zode, counsel h/f Mr. P. P. Kothari for the petitioner.
Mr.A.I.Shah, counsel for the respondent.

CORAM : MANISH PITALE, J.

DATE : 08.08.2018.

ORAL JUDGMENT

Heard.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. By this writ petition, the petitioner (original accused) has challenged order dated 11/04/2018 passed by the Court of Judicial Magistrate First Class, Nagpur and Special Court for Section 138 of Negotiable Instruments Act, 1881 proceedings, whereby the Magistrate has rejected the objection raised on behalf of the petitioner pertaining to memo issued by the bank for dishonour of cheque in the present case and directed that the said document be marked as Exhibit-22.

4. The respondent (original complainant) filed complaint before the Magistrate for dishonour of cheque of Rs.12,000/- purportedly issued by the petitioner herein. It is claimed that when the said cheque was deposited, it was returned/dishonoured by memo dated 13/08/2015 issued by the bank on the ground of "Insufficient Funds". The respondent sought to place on record the said memo of dishonour of cheque dated 13/08/2015, allegedly issued by the bank.

5. A perusal of the said document shows that it does not bear official mark of the bank and it also does not bear the signature of any bank official. There is a note at the bottom of the document, which shows that being a computer generated advice,

it does not require signature. When the said document was sought to be placed on record before the Magistrate by the respondent, an objection was raised on behalf of the petitioner that it could not be exhibited, as it did not bear either the official mark of the bank or signature of the bank official. The petitioner contended that if such a document was permitted to be exhibited, any complainant would be in a position to create such a document on a computer with the aforesaid note at the bottom and then place it on record as proof of dishonour of cheque. It was contended that the Magistrate did not apply his mind to this aspect of the matter, while rejecting the objection of the petitioner and directing that the said document be marked as Exhibit-22.

6. In response, it is contended on behalf of the respondent that merely because the said document stood exhibited, no prejudice was caused to the petitioner. The said contention cannot be accepted, because the petitioner has raised objection at the first available opportunity. The marking of the document as an exhibit does have a serious implication in such cases. Even otherwise, the respondent can avail of other modes of proving that the cheque in question was indeed dishonoured by examining concerned bank official or placing on record certificate

under section 65-B of the Indian Evidence Act, 1872, regarding the memo in question. But, if the said document in question is permitted to be accepted, it would lead to a situation where the respondent as the complainant would rely on a document that has no official mark of the bank or signature of any bank official to claim proof of dishonour of cheque. This cannot be permitted and it shows that the objection raised by the petitioner was valid.

7. The Magistrate has proceeded in a mechanical manner in the present case and rejected the objection of the petitioner, only on the ground that the aforesaid note on the document in question, stated that it being a computer generated device, no signature was required. The approach adopted by the Magistrate is erroneous. It is found that the order rejecting the objection raised on behalf of the petitioner and marking the document in question as Exhibit-22, is unsustainable. Accordingly, this writ petition is allowed. The impugned order is set aside. The objection raised by the petitioner is sustained.

8. Rule is made absolute in the above terms.

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JUDGE