

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 429 of 2015

Rajesh Yadav, son of Ramkhilawan Yadav, aged about 39 years. R/o
Laxman Nagar, Raipur, Distt.Raipur (C.G)

---- Petitioner

Versus

1. Ramchand Khatwani, son of Late Tulsidas Khatwani, aged about 46 years, R/o C-21, Rajiv Nagar, Raipur, Distt. Raipur (C.G).
2. State of Chhattisgarh. Through District Magistrate, Raipur, District Raipur

---- Respondents

For Petitioner	:	Mr. Adil Minhaj, Advocate
For respondent No.2	:	Mr. M. Asha, Panel Lawyer, for the State.

Hon'ble Shri Justice Goutam Bhaduri

Judgment /Order on Board

31.07.2015

1. By this petition filed under Section 482 of the Code of Criminal the petitioner has challenged the order dated 23.04.2015 passed in Criminal Revision No.109/2015 by the learned Additional Sessions Judge/Special Judge (CBI), Raipur, District Raipur whereby the order passed by the JMFC, Raipur, on 04.03.2015 in Criminal Case No.672/2013 has been affirmed.
2. Brief facts of the case are that a complaint was filed under Section 138 of the Negotiable Instrument Act by respondent No.1 against the applicant which was registered as Criminal Case No.672/2013 wherein the complainant was examined. After closure of the evidence of the complaint, as per the order sheet, the case was fixed for defendant's evidence on 13.3.2013. Thereafter on day to day basis the matter was fixed for evidence. Subsequently, an application was filed by the petitioner in the year 2015 with a prayer to examine the

entries of the Cheque by a handwriting expert which was rejected by the trial Court. Thereafter, the Additional Sessions Judge has also rejected the revision filed by the applicant. Hence, this revision.

3. It is contended on behalf of the petitioner that the because of cordial family relations, such blank cheque was given which was subsequently misused by the complainant and consequently, the complaint was filed. Therefore, in order to prove such facts, the said application to examine the entries of cheque by handwriting expert was moved. Learned counsel for the applicant relied on a case law reported in **(2007) 2 SCC 258 – Kalyani Baskar (Mrs.) Vs. M.S. Sampooranam (Mrs.)** and would submit that the Magistrate should have allowed the enquiry under Section 243(2) by accepting the prayer of the petitioner to send the cheque for examination by the handwriting expert.
4. I have heard learned counsel for the parties and perused the orders of the courts below filed along-with this petition.
5. The Supreme Court in *Kalyani Baskar v. M.S. Sampooranam (supra)* has held that as per Section 243(2) of Cr.P.C., a Magistrate holding an enquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the documents for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach to his own conclusion with the assistance of of the expert. The parties shall be entitled to rebut the case of each other if the document viz. the Cheque on which the respondent has relied upon for initiating criminal proceeding against the appellant would furnish good material for rebutting that case. If the magistrate declines to send the document for examination and the opinion of

hand writing expert is deprived it will lead to loss of opportunity for rebutting allegations made by the petitioner. However, the said preposition is laid down keeping in mind the fact that it should not be done to protract the trial or delay the proceeding of the criminal case.

6. Having thus considered that the matter is still in the stage of evidence and the trial is going on, in the opinion of this Court, looking to the pendency of the criminal complaint which is of the year 2013, the circumstances can be mitigated if the petitioner is directed to pay the cost for the same. The payment of cost will compensate to some extent the delay caused to the complainant. Therefore, it is directed that if the petitioner pays the cost of Rs.5000/- to the respondent then in such case, the JMFC shall be obliged to send the cheque for expert opinion as has been desired by the petitioner.
7. In view of this, the finding recorded by the Additional Sessions Judge dated 23.04.2015 is modified to the above extent. The said exercise shall be done as early as possible and thereafter the trial Court shall conclude the trial within a further period of six months.
8. With the above observation/direction, this petition stands disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**