

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 544 of 2015

Prakash s/o. Narayanrao Salunke,
Age : 57 years,
Occupation : Business,
R/o. Plot No.5, Sukhshanti Bungalow,
Pramodnagar, Sector No.1,
Devpur Navgane Road, Dhule.

.. Petitioner.

versus

1. Purushottam s/o. Chaitram Patil,
Age : 58 years,
Occupation : Agriculture,
R/o. : At & Post Waghadi (Kh.),
Taluka : Shindkheda,
District : Dhule.

2. The State of Maharashtra.

.. Respondents.

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*Dr. (Mrs.) Kalpalata Patil (Bharaswadkar), Advocate,
for the petitioner.*

*Mr. S.D. Kaldate, Additional Public Prosecutor, for
respondent no.2 - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 21ST APRIL 2015

ORAL JUDGMENT :

1. Heard learned Counsel for the petitioner and the learned Additional Public Prosecutor for respondent no.2 - State.
2. Rule. Rule made returnable forthwith. By consent, heard finally.
3. Since the petition is against an interlocutory order, the service of notice upon Rule to respondent no.1 is not necessary in view of the peculiar facts and circumstances of the case.
4. The petitioner herein questions the correctness and validity of the order passed by the Additional Sessions Judge, Dhule, dated 25-2-2015, below Exhibit 4 in Criminal Revision Application No. 115/2014, thereby rejecting the prayer for placing reliance upon the report of the handwriting expert. The petitioner herein is the accused in S.T.C.C. No. 1119/2009, pending on the file of Judicial Magistrate (F.C.), Sindhkheda.
5. That, during the pendency of the proceedings, the petitioner herein, in order to rebut the presumption, had filed an application seeking relief of sending disputed cheque with the admitted handwriting to the handwriting expert. The said application was allowed on the condition that the petitioner shall deposit an amount of Rs. 5,000/- in Sindhkheda Court. The handwriting expert had sent a sealed envelope and it was specifically stated that the total fee of the handwriting expert was Rs. 5,220/-. The petitioner had not deposited the deficit amount of Rs. 220/-.

The petitioner has sought time for depositing the said amount. However, the amount was not deposited till today.

6. The learned Counsel for the petitioner submits that, in fact, the petitioner had entrusted the said amount with the Advocate representing him and requested him to deposit the said amount. However, the Advocate representing the petitioner had not deposited the said amount. On 6-7-2013, the learned Magistrate entrusted with the matter, had passed an order that the applicant had deposited Rs. 5,000/- towards the fees of the handwriting expert, however, Rs. 220/- remained to be paid. He was ordered to comply since 3-6-2013. The learned Magistrate had granted time for compliance with a condition precedent, that he shall deposit cost of Rs. 100/-. The learned Counsel for the petitioner submits that the petitioner was not aware of the order dated 6-7-2013 and, therefore, the said amount was not deposited. The petitioner had then filed an application below Exhibit 128/C, requesting the Court to open the sealed envelope containing report of the handwriting expert. Since the amount was not deposited, the learned Magistrate had rejected the said application vide order dated 14th October 2014.

7. Being aggrieved by the said order, the petitioner had filed Criminal Revision Application No. 115/2014. The learned Additional Sessions Judge had also observed that the applicant had not filed any application seeking the relief of setting aside the order dated 6-7-2013, and hence the Court had drawn an adverse inference against the accused / applicant. It was observed that the applicant had also filed application for changing the Advocate. However, he did not pay the remaining amount

nor prayed for extension of time for paying the said amount.

8. Taking into consideration the material on record, the orders passed by the courts below, and the submissions advanced across the Bar, this Court is inclined to grant time to the applicant to deposit the said amount. The learned Counsel for the petitioner submits that the petitioner / applicant will comply with the order dated 6-7-2013 and deposit an amount of Rs. 220/- plus Rs. 100/-, as directed by the learned Magistrate, and Rs. 500/- towards cost.

9. In the result, the petition is allowed.

(A) The order passed by the Additional Sessions Judge, Dhule, dated 25-2-2015, below Exhibit 4 in Criminal Revision Application No. 115/2014, is quashed and set aside.

(B) Upon depositing the amount of Rs. 820/-, as aforesaid, by the petitioner / applicant, the Judicial Magistrate (F.C.), Sindhkheda, shall open the sealed envelope containing handwriting expert's opinion, and proceed with the matter in accordance with law. The petitioner / applicant shall deposit amount of Rs. 820/- within a period of two weeks from today, in the trial court.

(C) It is made clear, that this Court has not expressed any opinion on merits of the matter pending before the learned Magistrate and the learned Magistrate shall decide the matter on its own merits.

10. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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