

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.1254 OF 2014

A.K.Sureshkumar .. Applicant
-Versus-
P.A.Pradeep & Anr. .. Respondents

Mr.Mohan Pillai i/b. Madhavi M. Pillai for applicant
Mr.V.B.K.Deshmukh, APP for State.

CORAM : M.L.TAHALIYANI, J.

DATE : 10th February 2015.

P.C.

1] Heard the learned Advocatef for the applicant and learned APP for State – respondent No.2. None appears for respondent No.1. The applicant is the complainant before the Magistrate in Criminal Case No.3795/SS/06. The recording of evidence is completed in the said case. The case is at the stage of recording of statement of the accused No.1 (respondent No.1) under section 313 of the Cr.P.C.

2] The respondent No.1 had earlier made an application for sending the cheque in question to the documents examiner to

determine whether the cheque was written by the respondent No.1. The said application was allowed and the cheque was sent to the document examiner. The document examiner, however, wanted natural hand writing of respondent No.1 of the contemporary period. Respondent No.1, therefore, made an application to the court for securing the documents from the bank, whereunder his handwriting of the contemporary period was available. The said application was later on withdrawn. Thereafter, the respondent No.1 got the documents from his employer and requested the trial magistrate to send those documents to the document examiner. The trial magistrate rejected the prayer of respondent No.1. He, therefore, moved the sessions court against the order of the Magistrate. The sessions court, after hearing both the sides and examining all the issues involved in the case, passed following order.

- “1. The revision application is partly allowed;
2. The order dated 24.9.2013 passed by the Ld.C.M.M. 48th Court, Andheri, Mumbai rejecting the application filed at Ex.21 is hereby set aside;
3. The application filed at Exh.21 is allowed;
4. The documents as prayed in Exh.21 be forwarded to the hand writing expert for his opinion

along with documents which were received from the hand writing expert by letter dated 23.5.2012 subject to the directions to the concerned hand writing expert to make the compliance and to send the report to the Ld. Lower court;

5. The Ld. Lower Court shall follow the hand writing expert to get the report as early as possible that too as per the convenience of the hand writing expert and should get dispose of the said case on merits within the period of one month from the date of receipt of the said letter;

6. Parties to bear their own costs;

7. The Ld. lower court should not get impressed by any observations made in this revision and the original Cri.case should be decided on its own merits;

8. As per request made by the Ld. Advocate Mr.Pillai the operation of this order is stayed for two weeks.”

3] This order of sessions court is impugned in the present application. The contention of the learned Advocate Mr.Pillai appearing for the applicant is that lot of time has already been wasted by respondent No.1 by moving some or the other application and that he is trying to delay the proceedings. The act of respondent No.1 of withdrawing his earlier application for securing his natural hand writing has also been questioned by the learned

Advocate, Mr.Pillai for the applicant.

4] Considering the fact that the cheque in question was already sent to the document examiner and that the document examiner wanted contemporary handwriting of respondent No.1, it was just and proper to send the contemporary handwriting of respondent No.1 to the document examiner. In my opinion, the learned Magistrate should have granted the prayer. Had he granted the said prayer, a lot of time could have been saved, which has resulted in multiple proceedings which have reached to this Court. Moreover, there was nothing in the prayer which could have caused prejudice to the applicant.

5] I have gone through the order passed by the learned Additional Sessions Judge. The order of the learned Additional Sessions Judge upsetting the order of the Magistrate is absolutely right. Moreover, the learned Additional Sessions Judge has taken care that the proceedings are not delayed intentionally by respondent No.1. The learned Sessions Judge has stated in his order that the learned Magistrate shall get the report from the

document examiner as early as possible and shall dispose of the case in question within a period of one month from the date of receipt of the report by the document examiner.

6] In view of what has been stated by me hereinabove, the application is dismissed. However, the learned Magistrate is directed to get the report of handwriting expert within 30 days from the date of despatching the documents in question. The order of this court shall be communicated to the document examiner by the Magistrate. The trial of case pending before the Magistrate shall be concluded within a period of two weeks from the date of receipt of documents from the document examiner. The application is disposed of accordingly.

(M.L.TAHALIYANI, J.)