

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 161 OF 2016

SURINDER KUMAR KHOSLA, THR. HIS
POA SUSHIL KUMAR MALLICK.

... Applicant

Versus

M/S. MAIZONS COASTLINE DEVELOPERS
PVT. LTD THR. ITS DIRECTOR PRADEEP
PUNDALIK GHADI AMONKAR.

... Respondent

Mrs. A. Agni, Senior Advocate with Ms. Aditi Kamat, Advocate for
the Appellant.

Coram:- C. V. BHADANG, J.

Date:- 9th August, 2016

P.C.:

Heard learned Senior Counsel for the appellant for sometime.

2. The appellant is an accused in a private complaint filed by the respondent before the learned JMFC at Mapusa. The complaint alleges offences under Section 463, 465, 468, 469 & 471 of the Indian Penal Code. A letter dated 30/04/2004 which according to the respondent-complainant is forged was referred for the examination by the handwriting expert who has given his report. The handwriting expert is yet to be examined in the case. At this stage, the appellant filed an application for sending the very same document i.e. letter dated 30/04/2004, to another handwriting expert which has been rejected by the learned Magistrate by order dated 19/09/2013, on the ground that referring the disputed letter again to the handwriting

expert at CFSL, Hyderabad will serve no purpose. This order was challenged by the appellant before the learned Sessions Judge. The learned Sessions Judge by judgment dated 5/07/2016 has dismissed the revision application, however, with a liberty to the petitioner to file fresh application before the Magistrate for referring the letter dated 30/04/2004 along with a specimen signature of the Directors of the respondent - complainant to the other handwriting expert after the handwriting expert from the CFSL, Hyderabad has been examined and cross-examined. The Sessions Judge has stipulated that if such an application is moved then the Trial Court shall decide the same afresh after taking into consideration the report of the handwriting expert of the CFSL, Hyderabad.

3. The learned Senior Counsel for the appellant submits that there is no prohibition for sending the same document to a different handwriting expert at the instance of the accused. The learned Senior Counsel has pointed out the observations in para 10 & 11 of the judgment of the learned Sessions Judge in order to submit that the right of the appellant to lead defence evidence including that of the handwriting expert, cannot be made dependent on the evidence of the other handwriting expert who may be examined by the complainant.

4. I have considered the circumstances and the submissions made. Indisputably, the questioned letter was referred to the handwriting expert at CFSL, Hyderabad and there is a report on record. The

expert is yet to be examined. It is evident that it is for the respondent-complainant to establish its case by examining the expert or otherwise. The stage of leading defence evidence is yet to come. The learned Sessions Judge has already granted liberty to the petitioner to apply for sending letter to the CFSL, Hyderabad. The appellant has a right to lead defence evidence, if so advised and the said right cannot be made dependent on the examination of the handwriting expert of the complainant.

5. In that view of the matter, if the appellant files any such application, to refer the letter dated 30/04/2004 and any other document to the handwriting expert at the stage of defence evidence, the Magistrate shall decide the said application on its own merits, without being influenced by the observations in para 10 & 11 of the judgment of the learned Sessions Judge. With this, no case for interference is made out. The petition is dismissed.

C. V. BHADANG, J.

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