

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1290 OF 2014

Ishwarbhai Vitthalbhai Sachapara .. Petitioner
-Versus-
State of Maharashtra & Anr. ..Respondents

Mr. R.P.Hake Patil h/f. S.P.Kadam for petitioner
Mr. Satish Chari i/b. C.Y.Bane for respondent Nos. 3 and 4
Mr. H.J.Dedhia, APP for State.

CORAM : DR. SHALINI PHANSALKAR JOSHI, J.

DATE : 22nd February 2016.

P.C.

1] The petitioner is original complaint in C.C.No.111/PW/2005 who is aggrieved by the order dated 29th January 2014 passed by the Metropolitan Magistrate, 18th Court, Girgaum thereby rejecting his application seeking direction to the Investigating officer to refer the documents in his application at Exh.27 to the officer of State Examination of documents along with specimen signature/ hand writing of the accused for expert opinion.

2] Facts leading to filing of this petition are somewhat interesting. The present petitioner has filed criminal Writ Petition No.2222 of 2006 in this Court raising certain grievances against the investigation carried out in

the complaint lodged by him for the offences punishable under section 420 and 406 read with 34 IPC. In the said writ petition, on 30th November 2006, this Court has given certain directions to the Investigating Officer to make all efforts to attach the properties of the principle offender. As the petitioner herein was not satisfied with the investigation conducted by the D.B.Marg police station, he again approached this court and this court by its order dated 14th February 2007 gave further directions to Senior Inspector of D.B.Marg Police Station to take necessary steps for carrying out further investigation and if required to file additional charge sheet under section 173(8) of Cr.P.C.

3] Subsequent thereto, the police filed charge sheet in the trial court and, thereafter, when the trial was in progress, the petitioner filed an application contending that he is having certain documents pertaining to the respondent accused such as passport of the accused, application filed by the accused for life insurance, one cheque bearing signature of the accused and the remand application of application bearing signature of the accused. He was also having certain other documents. It was submitted that the Investigating Officer should send these documents along with specimen signature and handwriting of the accused to the office of Chief State Examiner of documents, Maharashtra State, Mumbai as they would be helpful in proving the offence.

4] The submission is also made that though earlier certain documents were sent to the Examiner of Documents, the report furnished by him on 31st July 2009 reflects that the identified characteristics/ features of the questioned signature at hand for examination being limited in extent, they do not provide adequate identifying data for comparison with those at S-1 to S-6. As such because of the absence of adequate identifying characteristics / features for comparison, it has not been possible to give any definite opinion as regards identify or otherwise of the Red circled signatures marked as Exh.Q-1 when compared with those at Exh.S-1 to S-6.

5] According to the learned Counsel for the petitioner, therefore, if these additional documents as enlisted in this application are sent to the hand writing expert, he will be in a position to give concrete opinion. It is also his submission that since beginning the Investigation agency is not cooperating with the petitioner and, therefore, the interference of court was necessary to direct investigating agency to send these documents to handwriting expert for their opinion.

6] Learned Counsel for respondent has strongly opposed this application and the trial court also after considering the fact that additional

investigation was also carried out and the trial was mid-way, rejected the application.

7] On perusal of the impugned order of the trial court, I do not find any illegality much less any perversity or any impropriety in the impugned order. On the initiatives taken by the petitioner, the matter was sent for investigation and re-investigation also, as per the order of this Court. The investigating officer has filed fresh report upon further investigation on 16th August 2012. The documents which were produced by the petitioner were also sent for the opinion of the handwriting expert and, thereafter, the trial proceeded. Five witnesses are examined in all and, then, at that stage on 18th January 2014, the present application came to be filed.

8] Though in the present application, the petitioner has mentioned certain documents bearing signature of the accused, as rightly submitted by the learned Counsel for the respondent, he has not explained how he came into possession of these documents and whether these documents were also annexed along with the complaint or were with him when he filed the complaint or when the evidence of the witnesses came to be recorded, including his own evidence.

9] Surprisingly, opinion of the hand writing expert to whom the

documents were sent for comparison, is received in the year 2009 itself i.e. on 31st July 2009. Since then, the petitioner remained quiet and did not take any action for a period of five long years. Only when the trial proceeded and five witnesses were examined he has filed his another application seeking further investigation. It is pertinent to note that, even after a fresh report of further investigation was filed before the trial court on 16th August 2012, the petitioner did not move the court for sending some more documents to handwriting expert.

10] Thus the application filed by the petitioner before the trial court was not only suffering from delay and latches, it is also not making out a case as to how these documents came into his custody and why there was such a delay in seeking further investigation. The trial has commenced on the basis of first charge sheet and the report under 173 (8) Cr.P.C. after examination of five witnesses. Hence no question arises again for sending the matter back for further investigation. The writ petition thus holds no merits or no illegality is pointed out in the impugned court of the trial court and hence dismissed.

(JUDGE)