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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.998 OF 2016

M.D.Kale	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr.Ujjwal Gandhi i/b Mr.Rishi Bhuta, for the Applicant.

Ms.P.P.Shinde, A.P.P for the Respondent No.1-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 29th NOVEMBER, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant has impugned the Order dated 27th July, 2016, passed by the learned Additional Sessions Judge, Greater Mumbai, below Exhibits – 2 and 5 filed in Criminal Appeal No.424 of 2010.
3. Learned Counsel for the applicant submits that it is necessary to send the cheque in question to the handwriting expert/chemical analyser,

considering the fraud played by the respondent no.2. He submitted that the respondent no.2 has altered the date mentioned in the cheque, by inserting '1' before '3' to show that the cheque was issued on 13th May, 2003. He relied on the letter, which is on page 66 and the cheque which is on page 67 of the application in support of his submission. He therefore submits that in the light of the said fact, the applicant be permitted to adduce additional evidence to that effect and for that, the cheque be referred to the handwriting expert/chemical analyser, for its examination.

4. Perused the papers. It appears that the applicant has been convicted for the offence punishable under Sections 138 r/w 141 of the Negotiable Instruments Act, 1881. The accused no.1 - Modular Systems (Poona) Pvt. Ltd., has been sentenced to pay a fine of Rs.3,00,000/- (Rupees three lacs only), in default of payment of fine, the present applicant - M.D.Kale, the Director of accused no.1, was to suffer S.I., for 1 (one) month. The applicant was also sentenced to suffer S.I. for 4 (four) months and to pay a fine of Rs.6,00,000/- (Rupees Six lacs only), in default to suffer S.I. for 2 (two) months. Out of the said amount of Rs.9,00,000/-, the respondent no.2 was awarded compensation of Rs.8,00,000/-. Against the

said Judgment and Order of conviction dated 12th July, 2010, passed by the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai, the applicant preferred an appeal in the Sessions Court, being Criminal Appeal No.424 of 2010. Both the applications i.e. Exhibits- 2 and 5, filed by the applicant have not been annexed to the aforesaid application, but it is submitted by the learned counsel for the applicant, that one application was filed soon after the appeal was filed in 2010 and the other application was filed sometime in 2016. The basic contention of the applicant is that respondent no.2 – complainant had played a fraud by altering the date in the cheque and hence, it was necessary to adduce additional evidence and to send the cheque to the handwriting expert/chemical analyser for its examination. The said application i.e. Exhibits– 2 and 5 are stated to have been filed under Section 391 of Code of Criminal Procedure.

Section 391 of Cr.PC reads thus:-

“391. Appellate Court may take further evidence or direct it to be taken –

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or

the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

5. The application i.e. Exhibits – 2 and 5 are for sending the cheque for examination to the handwriting expert/chemical analyser. It appears that the said issue was raised by the applicant before the trial Court, however, no application was filed by the applicant in the trial Court, for sending the cheque to the handwriting expert/chemical analyser. The applicant had ample opportunity to file an appropriate application in the trial Court. It appears that the defence of the applicant is that the cheque was issued only as security. It is also doubtful whether by resorting to Section 391 of Cr.PC., such an application can be filed, considering the prayers in the said applications and the purport of Section 391 Cr.PC. It appears that the applications have been filed with the sole purpose of delaying the hearing of the appeal, which is filed in 2010. No ground is made out for interfering with the impugned order.

6. The Application is accordingly rejected and disposed of as such. However, since the appeal is of 2010, hearing of the appeal is expedited.

7. It is made clear that the observations made herein are prima-facie for deciding the aforesaid application, and the learned Sessions Court shall decide the appeal on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.