

Anand

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

WRIT PETITION NO.3042 OF 2016

Dilip Inderlal Durgiani .Petitioner

Vs.

Manumal Santumal Gogia & anr. .Respondents

Mr.S.Inamdar i/b. Mr.V.Killedar, Advocate, for
the Petitioner

Mr.V.B.Konde-Deshmukh, APP, for the Respondent
No.2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 31.08.2016

P.C.

. Heard learned counsel for the
Petitioner and the learned APP for the
Respondent No.2.

2. By this Petition, the Petitioner has
impugned the order dated 04.07.2016 passed by
the learned JMFC, 5th Court, Ulhasnagar, Mumbai,
by which his Application (Exh.56) filed in
S.C.C.No.415 of 2015 praying therein, for
sending the cheque bearing No.614955 to the

handwriting expert, came to be rejected. The said order has been confirmed by the learned Sessions Judge in revision vide order dated 10.08.2016.

3. Learned counsel for the Petitioner states that the Petitioner had not signed the cheque and has denied his signature on the said cheque and Speed Post Acknowledgement receipt Exh.26. He submitted that the defence of the Petitioner is that the cheque was given as a security, in connection with some other transaction and not in connection with the transaction for which the complaint was filed. He submitted that in the interest of justice, Speed Post Acknowledgment receipt Exh.26 and the cheque Exh.21 be sent to the handwriting expert.

3. Perused the papers, including the impugned the order dated 04.07.2016 passed by the learned JMFC, 5th Court, Ulhasnagar, Mumbai

and the order dated 10.08.2016 confirmed by the learned Sessions Judge in revision. It appears that the cross-examination of the Complainant was over in January, 2016 and that the statement under Section 313 of the Code of Criminal Procedure came to be recorded on 30.01.2016. On 17.03.2016, the Petitioner (accused) led his evidence and later examined his wife as defence witness No.2 and thereafter, the Petitioner filed a pursis closing his evidence. Thereafter, the matter was adjourned for final arguments. It is at that stage, that the Petitioner filed an Application praying therein, for sending the cheque bearing No.614955 Exh.21 and the Speed Post Acknowledgment receipt Exh.26 to the handwriting expert. The said Application was filed at the fag end of the trial, after the Petitioner (accused) had closed his evidence. The argument whether or not the cheque was given in connection with the liability rising in the present case or was given in connection with an

earlier transaction, is a matter which will be decided by the trial Court on the basis of the material adduced by the parties. No infirmity can be found in the impugned orders.

4. Accordingly, the Petition stands rejected. It is made clear, that this Court has not considered the case of the Petitioner on merits and the trial Court shall decide the case on its own merits uninfluenced by the rejection of this Petition.

(REVATI MOHITE DERE, J.)