

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4630 OF 2015**

Mr. Akhilesh Nandlal Chaubey Petitioner
Vs.
M/s Anand Builders & Developers & Anr. Respondents

Mr. S.A. Sawant alongwith Mr. B.K. Barve i/by B.K. Barve & Co.
for the Petitioner.

Mr. Girish Paryani alongwith Ms. Rajashree Waikar, Advocate for
respondent no.1.

Ms. Poonam Bhosale, A.P.P. for the State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 25th February, 2016

P.C.

1 The petitioner is the accused in Criminal Complaint No. 690 of 2010 filed by respondent no.1 under Section 138 of Negotiable Instruments Act, which is pending in the Court of Judicial Magistrate First Class at Kalyan, District Thane. He challenges the order dtd. 28th October, 2015, by which the trial court rejected his application for sending the cheques in question for opinion of the handwriting expert. The purposes for which the petitioner desired to obtain opinion of the expert are as under :

- A. By whom the material alterations on all the 5 cheques bearing nos. 066388, 066387, 066380, 066378, 066379 as regards corrected date of cheque, signature below the corrected date, name and payee, amount in words were carried out and
- B. Whether the alteration made are in different ink and in different handwriting.
- C. What is the age of ink on all disputed receipts referred to above.
- D. Whether signatures on the disputed No Objection Certificate dtd. 24-6-2006 and full and final payment receipt referred to above are that of the complainant.

The application had been filed on 7th August, 2015, when the entire evidence in the complaint was over including recording of the statement of the petitioner under Section 313 Code of Criminal Procedure. The application was opposed by the respondent on the ground that the contention in the application constituted a totally new defence of the petitioner and that the application had been filed with intent to prolong in the complaint.

2 The trial court held that on going through the cross-examination of the respondent and the documents on record, it was clear that the defence of the petitioner in the complaint was

that the cheques in question were issued only as a security in the transaction. Not even a single suggestion had been given by the petitioner in the cross-examination of respondent no. 1 that the date on the cheques in question were not written by him or that the same were written either by respondent no.1 or any other person on his instructions. The trial court further noted that the petitioner did not take the opportunity of explaining the circumstance in his statement under Section 313 Cr.PC.. It, therefore, dismissed the application with observation that the application was filed merely to fill up the lacunae in the defence of the petitioner.

3 Mr. Sawant, the learned advocate for the petitioner submits that in the facts and circumstance of the case, there is obvious alteration in the cheques by respondent no.1. He submits that the cheques in question are supposed to have been given by the petitioner towards part payment of price of the flat purchased by the petitioner from respondent no.1 in the year 2006. According to the petitioner, the cheques had been issued to respondent no.1 only by way of security. Thereafter the petitioner had made all the payments and was put in possession of the flat in the very year. The petitioner has relied upon receipts for the payments made by him and the No Dues Certificate allegedly given by respondent no.1 towards the

payments being made in full and final payment.

4 The factual aspect submitted by Mr. Sawant is seen to have been taken into consideration by the trial court after noting the claim. It has observed in the impugned order that respondent no.1 has denied that it has executed the documents relied upon by the petitioner.

5 In view of the contention of respondent no.1 that the documents relied upon by the petitioner are the receipts of the payment made and the certificate mentioned at the bottom of one of the documents are not issued by it, the reliance by the petitioner on the documents cannot be allowed in the absence of evidence of proof of those documents. As regards the alteration in the date, as has been observed by the trial court in the impugned order, not even a suggestion in that regard has been given by respondent no.2 in the cross-examination. Therefore, I find no infirmity with the impugned order and hence the writ petition is dismissed.

(Smt. R.P. SondurBaldota, J.)