

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 179/2015.

Kishorkumar Dayalal Doshi

-VERSUS-

The State of Maharashtra and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
KUM. INDIRA JAIN, JJ.

DATE : JULY 27, 2016.

Heard Shri S.V. Sirpurkar, learned Counsel
for the appellant, Mrs. K.S. Joshi, learned A.P.P. for
respondent no.1 and Shri V. Awchat, learned Counsel
for respondent nos. 2 to 4.

2. Appellant, who has sought leave under
Section 372 of Criminal Procedure Code is
complainant in Criminal Case No.540/2005 and an
informant. It appears that after orders of this Court
dated 10.01.2013 in Criminal Writ Petition
No.502/2012, Criminal Case No. 540/2005 has been
tried as Warrant case under Section 210 of Criminal

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Procedure Code along with R.C.C.No.71/2013.

3. Shri Sirpurkar, learned Counsel for the appellant submits that in private complaint, at the stage of evidence before charge, the appellant had examined hand writing expert. After warrant case began, he twice made efforts to get that on record of warrant case. However, the efforts failed. The prosecutor entrusted with prosecution did not examine the hand writing expert and this resulted in acquittal of the accused persons.

4. Shri Awchat, learned Counsel for respondent nos. 2 to 4 and Mrs. Joshi, learned A.P.P. for respondent no.1 have invited our attention to the impugned judgment. They point out that after recording evidence of prosecution witnesses, present appellant filed a Pursis Exh.189, closing his case. At that time he did not seek leave to examine hand writing expert. It is further submitted that earlier orders passed by the Trial Court rejecting his applications at Exh. 120 and 139 for accepting evidence recorded at EBC stage, was never challenged by him and even today those orders are not assailed.

5. Our attention is also drawn to the fact that

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even otherwise, trial Court has looked into the report of hand writing expert at Exh. 233 and found it irrelevant for the purpose of trial.

6. We find that before recording of evidence in warrant case, two applications i.e. Exh. 120 and 139 were moved by the appellant for treating evidence recorded at the stage of evidence before charge in private Criminal Case No. 540/2005, as part of evidence in R.C.C.No. 71/2013. Those applications were rejected. Recording of evidence began thereafter. After recording of evidence of Sub-Registrar, Ramesh and evidence of appellant/informant, he filed Pursis Exh.189 and closed his side. Thus, he had opportunity to examine hand writing expert, but, that was not utilized.

7. Perusal of paragraph no.15 of the judgment of the trial Court reveals that report of hand writing expert Exh.233, could have been only decisive to find out whether signatures on Will were made by the deceased or not. It could not have been used to implicate any of the respondents before this Court. Thus, we find substance in contention of respondents that said report was not relevant for the purpose of

prosecution.

8. We therefore, find no case made out for grant of leave. The same is rejected. Consequently, the appeal stands dismissed. No costs.

JUDGE

JUDGE

Rgd.

CERTIFICATE

I certify that this judgment/order uploaded is a true and correct copy of original signed judgment/order.

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