

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1064 of 2016**

- Ashok Singh S/o Jagdish Singh Aged About 40 Years R/o Near Old Employment Office, Chandani Chowk, Kududand, Police Station- Civil Line, Tahsil, Civil & Revenue District- Bilaspur, Chhattisgarh. --- **Petitioner**

Versus

- Rejendra Kumar Yadav S/o Late Sada Shivram Yadav Aged About 43 Years R/o Om Nagar, Jarhabhata Bilaspur, Police Station- Civil Line, Tahsil, Civil & Revenue District- Bilaspur, Chhattisgarh. --- **Respondent**

For the Petitioner : Mr. Ratnesh Agrawal, Advocate

For the respondent : Mr. Ashish Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board**24.10.2017**

Heard.

1. This petition is against the order dated 12.08.2016 passed by the learned Judicial Magistrate First Class Bilaspur, Distt. Bilaspur in Criminal Case No. 10566/2014 wherein the prayer made by the petitioner to produce the handwriting expert Dr. Sunanda Denge as defence witness was dismissed.
2. Learned counsel for the applicant would submit that by an order dated 30.07.2015 the prayer made to produce the expert was allowed. However, when the expert Dr. Sunanda Denge was approached she refused to come and give her evidence before the Court consequently the petitioner cannot procure her attendance and he may be given the opportunity to produce the witness for adducing expert

evidence before the Court. It is further submitted that since there was no order to pay the summons, therefore, the summons could not be paid and further prayer was made to summon the witness by an application, the same was refused.

3. The order dated 12.08.2016 was perused. The application dated 05.08.2016 is also on record wherein it shows that the petitioner wanted to summon the hand writing expert Dr. Sunanda Denge and prayer was made to procure her attendance by summons. The order dated 30.07.2015 is not placed before the Court wherein the earlier prayer to procure the attendance of handwriting expert was allowed. The impugned order dated 12.08.2017 records that after passing the order dated 30.07.2015 no compliance was made by the petitioner even after lapse of one year nor any certified copy of the order has been placed before the Court to show that whether any effort was ever made by the petitioner or not. The order sheet reflects that after one year of the prayer which was allowed to call the handwriting expert, the name was proposed. In absence of any order-sheets between 30.07.2015 and 12.08.2016 no presumption can be drawn in favour of the petitioner. The copy of the complaint which is placed on record would show that the complaint was filed in the year 2013, therefore, it appears that deliberate attempts have been made to protract the delay of trial. The order dated 30.07.2015 wherein the petitioner stated that he would procure attendance of the handwriting expert in person at his own cost appears to be casually made as no name was proposed even after one year. Apparently it

appears that there has been deliberate non-compliance of the order dated 30.07.2015 and in absence of the order sheet, no presumption can be drawn in favour of the petitioner after lapse of almost one year. Therefore, the petition has no merit and it is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**

Rao