

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

**WRIT PETITION NO.4230 OF 2017
WITH
WRIT PETITION NO. 4231 OF 2017**

Shrikant Sayaji Shinde

....Petitioner
(in both petitions)

Versus

The State of Maharashtra

....Respondent
(in both petitions)

Mr. Rupesh A. Zade for the petitioner.

Mr. H.J. Dedhia, APP for the State (in WP 4230 of 2017)

Mr. P.H. Gaikwad, APP for the State (in WP 4231 of 2017)

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 20th NOVEMBER, 2017

P.C. :

1. By these petitions, the petitioner herein has challenged the order dated 28th September, 2017 whereby the learned Additional Sessions Judge, Baramati, District Pune had dismissed the Criminal Revision Application Nos. 41 and 42 of 2015 and thereby confirmed the order dated 22nd September, 2015 passed by the learned Judicial Magistrate, First Class, Indapur in RTC No. 128 and 126 of 2005 respectively.

2. Heard Mr. Rupesh A. Zade, learned counsel for the petitioner and Mr. H.J. Dedhia and Mr. P.H. Gaikwad, learned APPs for the State. Perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The petitioner was an accused in RTC No.128 and 126 of 2005. He is facing trial for offences punishable under Sections 167, 415, 463 & 464 of the Indian Penal Code. The charge against the petitioner is that while he was posted as a Talathi of Village Navhi, he had fabricated form no. 7/12 and mutation entry no.1946. After the statement of the accused was recorded under Section 313 of the Criminal Procedure Code and the case was posted for final hearing, the petitioner/accused filed an application to refer 7/12 extracts of Block nos.544, 562, 572, 610, 644 & 654 of Village Nhavi, Taluka Indapur to the handwriting expert and to sought to ascertain whether the entries in the said 7/12 extracts are in the handwriting of the petitioner/accused.

4. The learned Judge has held that the petitioner has sought to refer the documents to the handwriting expert to ascertain whether the entries are in his handwriting. The learned Magistrate has held that since the petitioner, who at the relevant time, was the Talathi of the village Nhavi, has not disputed the seal as well as his signature on the 7/12 extracts. The question whether the entries are in the handwriting of the petitioner or not, is not relevant. While confirming this order, the learned Sessions Judge has taken note of the fact that the case of the prosecution is that the mutation entries are in the handwriting of PW3. PW3 has also deposed that the entries are in his handwriting and the same bear the signature of the petitioner. The opinion of the expert witness is not necessary when there is no dispute over the fact that the entries in 7/12 extract (exhibit 24 to 29 & exhibit 47 to 49) are not in

the handwriting of the accused moreover, when the petitioner had not disputed the authenticity of the seal and his signature on the said extracts.

5. Having gone through the impugned order, I do not find any illegality or perversity in the findings recorded by the Sessions court. At this stage, it will also be advantageous to note that though under Section 243 of Criminal Procedure Code, the accused is entitled for an opportunity to lead evidence in his defence, the right of the accused under sub-section (2) of Section 243 of Criminal Procedure Code is not an absolute one. As held by the Apex Court in ***G. Someshwar Rao v/s. Samineni Nageshwar Rao 2009, ALL MR (CRI) 2815 S.C.***, the accused cannot take recourse of these provisions for the purpose of delaying the proceedings. An application filed by an accused must be for subserving the cause of justice and not for subverting the same. The instant case does not meet this requirement. I do not find any merits in these petitions. Hence, the petitions are dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)