

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

WRIT PETITION NO. 4590 OF 2015

Shri. Surendra Ramswarup Shah ... Petitioner

vs.

Shri. Sunil Omprakash Jalan & anr. ... Respondents

Mr. Tarun Kumar Sinha, Advocate for the petitioner.

Ms. N. S. Jain, A.P.P. for the State/respondent no.2.

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

Date : 22nd February, 2017

P.C. :

1. This petition challenges the concurrent findings of the Court below in favour of forwarding of the cheques in question for the opinion of the handwriting expert as regards the signatures and the handwriting on the cheques.

2. The brief facts leading to the present petition are that the petitioner has filed proceedings under Section 138 of Negotiable Instruments Act in respect of four cheques, each cheque in the sum of Rs.50,000/-, drawn in favour of "Krishna Syntex" dated 8th March, 2013. After receiving the summons in the proceedings and framing of charge, respondent no.1, accused filed the application at Ex.25 for sending the cheques in question to the State Examiner for his opinion as regards the handwriting and signatures on

the cheques. Respondent no.1 had claimed in the application that the cheques in question had never been issued by him. The cheques when presented for payment had been dishonoured by the Bank on the ground of the Bank Account of respondent no.1 being closed. The application was opposed by the petitioner on the ground that the same was premature. It was contended on behalf of the petitioner that the respondent could not have filed the application until he disclosed his defence in cross-examination of the complainant and made out a ground for forwarding the cheques to the handwriting expert. The trial Court by its order dated 25th July, 2014 allowed the application which order has been confirmed by the Sessions Court by its order dated 9th September, 2015 passed in Criminal Revision Application No. 195 of 2014.

3. The trial Court observes at para 3 of its order that bare perusal of the disputed cheques shows that there is a change in the date of issuance of the cheques from the year 2007 to 2013. There appears a signature below the alteration in the date which is in the ink different from the signatures on the disputed cheques. Considering the original date on the cheques of the year 2007 which is altered to a date eight years later and the fact of the bank account being closed in intervening period, the Trial Court opined that it was necessary to send the cheques for handwriting expert so as to give a proper opportunity to respondent no.1 of presenting his defence. The Sessions

Court while confirming the order has stated that the respondent has every right to rebut the case of the petitioner by seeking an opinion of handwriting expert particularly when he has come with the defence that the cheques in question were not issued by him and the signatures on it are not genuine.

4. Mr. Sinha, the learned advocate appearing for the petitioner submits that the Courts below ought not have considered and allowed the application before the evidence of the petitioner was recorded in the trial and he cross-examined on the cheques. Undoubtedly in the ordinary course the argument of Mr. Sinha would have been accepted. However in the facts of the present case the cheques by their bare appearance create doubt as regards their genuineness. Therefore in this extraordinary circumstances of the case, it cannot be said that the impugned order is not justified. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]