

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

CRIMINAL WRIT PETITION NO.327 OF 2018

Mr. Ramesh Kantilal Parikh

... Petitioner

Vs

Dilipkumar Kachardas Bhandari & Anr.

... Respondents

Mr. Amey Deshpande for the Petitioner.

Mr. Yogesh Dabke, APP, for the Respondent No.2 – State.

Mr. P. Ranjan i/b. M/s. Halai & Co. for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 06.02.2018

P.C. :

1. Heard the learned counsel for the parties.
2. By this petition, the Petitioner has impugned the order dated 30.11.2017 passed by the learned District Judge – 3 and Additional Sessions Judge, Malegaon, by which the Petitioner's application (Exh. 22) filed under Section 391 of the Criminal Procedure Code, came to be rejected.
3. Learned counsel for the Petitioner submitted that it is necessary to send the signed cheque in question to the handwriting expert, as the signature and writing of the said cheque was not that of the Petitioner. He submitted that it is also necessary to lead additional evidence in the said case for a just decision in the case. He submitted that

the Petitioner had laid a foundation in the cross-examination of the Respondent – complainant, and as such, there was no impediment for the Appellate Court to allow the said application.

4. Learned counsel for the Respondent No. 1 opposed the application. He submitted that no interference was warranted in the impugned order. He further submitted that the Petitioner was only trying to delay the proceeding before the Appellate Court i.e. Sessions Court. According to the learned counsel, the Petitioner cannot be permitted to fill up the lacuna at the appellate stage.

5. Perused the papers as well as the impugned order. The Petitioner has been convicted for the offence punishable under Section 138 of the NI Act, vide judgment and order dated 19.08.2015 by the Trial Court, Manmad. Being aggrieved by the said judgment and order of conviction and sentence, the Petitioner filed an appeal, being Criminal Appeal No.22/2015 in the Court of Sessions, at Malegaon, Nashik. Although, the said appeal was filed in 2015, the Petitioner filed an application under Section 391 of Cr. P. C. (on 14.09.2017 i.e. after almost two years,) and prayed that the cheque in question be sent to the handwriting expert for verification of the signature and writing on the said cheque. The said application was rejected by the learned Additional

Sessions Judge, vide order dated 30.11.2017. Hence, this petition.

6. The application under Section 391 of Cr. P. C. was filed belatedly i.e. after almost two years of the filing of the appeal, when the matter was posted for final arguments. Section 391 of Cr. P. C. cannot be used to fill up the lacuna. At no point of time, either in the trial court or immediately when the appeal was filed, any such grievance was made by the Petitioner. It appears, that this application was filed only for the purpose of further delaying the hearing of the appeal, which is pending before the Additional Sessions Judge. There is no infirmity in the impugned order dated 30.11.2017, warranting interference in writ jurisdiction.

7. Accordingly, this petition is dismissed and is disposed of.

(REVATI MOHITE DERE, J.)