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

CRIMINAL APPLICATION NO.1098 OF 2017

Hamid Khan Ahmed Khan Indapurwala	... Applicant
Versus	
The State of Maharashtra and Ors.	...Respondents

Ms.Sonal Parab a/w Ms.Madhu Hiraskar i/b Ms.U.M.Jhaveri, for the Applicant.

Mr.H.J.Dedhia, A.P.P for the Respondent No.1-State

Mr.Sanjeev Kadam a/w Mr.Siddharth Karje, Mr.Vindu Pandey i/b Legal Edge LLP for the Respondent Nos.2, 3 and 4.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th JANUARY, 2018

P.C. :

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr.Kadam waives service on behalf of Respondent Nos.2, 3 and 4. Learned APP waives service on

behalf of Respondent - State.

3. By this application, the applicant (original complainant) has impugned the order dated 11th October, 2017, passed by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai, in C.C.No.494/PW/2003, by which the prosecution's application for sending the original documents to the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State or any other Government handwriting expert for obtaining his opinion/confirmation, came to be rejected.

4. Learned Counsel for the applicant submits that the applicant (original complainant) has been running pillar to post, right from the inception i.e. from lodging of the FIR till date. She submits that despite the police having the original documents, no proper steps were taken by the police to send the original documents to the handwriting expert, for his opinion. She submits that the said documents i.e. documents mentioned in the application (Exhibit – 112) filed by the prosecution, go to the root of the matter, inasmuch as, the signatures on the said documents are not of the

applicant. She submitted that the applicant cannot be faulted, if the prosecution did not take proper steps to bring the original documents on record, which it was their bounden duty to do so.

5. Learned APP supported the application. He submitted that before the registration of the FIR, the applicant had given certified copies of the documents in question to the Investigating Officer, which the Investigating Officer sent to the handwriting expert. He submitted that after receipt of the opinion from the handwriting expert dated 5th December, 2001, (which was given subject to confirmation after the originals of Exhibits A-1 to A-4), the Investigating Officer lodged an FIR as against the accused. He submitted that during investigation, the police seized the original documents from the accused and again sent the original documents to the handwriting expert on 18th January, 2002. He submitted that the office of the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State vide order dated 12th September, 2002, observed that the Investigating Officer had not abided by the Rules contained in the Bombay Police Manual Vol.III, Rule No.16 and that opinion should not be sought twice on the same disputed documents. Learned APP very fairly submitted

that pursuant thereto, no steps were taken by the Investigating Officer to bring to the notice of the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State, that the opinion given on 5th December, 2001 was subject to confirmation of the originals i.e. Exhibits A-1 to A-4. He submitted that in the interest of justice, the said documents would have to be sent to the handwriting expert, since the said documents go to the root of the case.

6. Mr.Kadam, learned counsel for the respondent-accused opposed the application. He submitted that no interference was warranted in the impugned order at this stage. He submitted that the applicant (original complainant) should have been vigilant and that no steps were taken by him for almost 13 years to send the documents to the handwriting expert. He submitted that if the application is allowed, the proceedings will be further delayed.

7. Perused the papers as well as the impugned order. The applicant (original complainant) has alleged that the respondent-accused had forged certain documents and had submitted certified copies of the said

documents to the officer of the Dahisar Police Station. Pursuant to the said allegations, the concerned officer of the Dahisar Police Station sent the said certified copies of the documents, to the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State for examination and on 5th December, 2001, the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State gave his opinion, which reads thus:-

“Resultant upon a careful examination, I am of opinion that the Red-encircled signatures marked as Exs.A-1 to A-4 when compared with those on the Exhs. marked as S-1 to S-3 and N-1, N-2 shows dissimilarities which are indicative of their different authorship. **(subject to confirmation after the originals of Exhs.A-1 to A-4).**”

8. Pursuant to the said report dated 5th December, 2001, the Dahisar Police Station registered C.R No.337 of 2001 as against the respondent-accused, alleging offences punishable under Sections 406, 420, 465, 467, 468, 471, 474, 34, 120B of the Indian Penal Code. During investigation, the Investigating Officer of the Dahisar Police Station seized the original documents from the respondent-accused and accordingly a panchanama was drawn. Pursuant thereto, on 18th January, 2002 the

Investigating Officer of the Dahisar Police Station forwarded the original documents to the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State. The Additional Chief State Examiner of Documents, C.I.D., Maharashtra State, in its report dated 12th September, 2002, observed as under:-

“Subsequently, during examination it is seen that the Expert Opinion in present case has already been given by this office vide this office no.BHP/656/BB-291/2001, to submit the original documents but failed to comply the instructions. However, with the help of available documents the opinion had already been given by this office.

Further, while resubmitting the documents for examination the I/O has not abided by rules contained in Bombay Police Manual Vol.III Rule No.16 that opinion should not be sought twice on the same disputed documents. Instead of which the I/O should get verified the zerox documents from original for authenticity.

In view of the above and necessity to produce the documents in court, all the documents received under the above quoted reference are returned herewith for further action by the concerned I/O.”

9. Admittedly, no steps were taken by the police subsequent thereto, to bring to the notice of the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State, that the earlier opinion dated 5th December, 2001 was given subject to confirmation of the originals of Exhibits A-1 to A-4. It is only when the evidence commenced in 2015 that the applicant (original complainant) realised that the police had not submitted the original documents (alleged to have been forged) in the Court. Hence, the applicant filed an application and sought production of original documents from the police. The said application was rejected and hence the applicant was constrained to approach this Court, by filing Criminal Application No.1169 of 2016. During the hearing of the said application i.e. Criminal Application No.1169 of 2016, the learned APP on instructions of the Investigating Officer stated that all the original documents which were sought by the Counsel for the applicant were in their custody and that they would take appropriate steps to place the said original documents sought for, before the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai, on the next date. The Application was accordingly disposed of vide order dated 4th October, 2016. Infact, before the trial Court the stand of the Investigating Officer was that the documents

were not available with them, for reasons best known to them. Be that as it may, pursuant to the said order dated 4th October, 2016, the police submitted the original documents and filed an application under Section 91 of Code of Criminal Procedure for sending the original documents to the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State, or any other agency for the purpose of getting conclusions and final opinion of the handwriting expert. The said application so preferred by the prosecution was resisted by the respondent-accused. The learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai, vide order dated 11th October, 2017 rejected the said application after almost one year despite observing that it was a High Court expedited matter. The learned Magistrate further observed that the earlier opinion was given on the certified copies of the original documents and hence, the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State, refused to give second opinion on the original documents.

10. It is pertinent to note, that the first opinion dated 5th December, 2001 given by the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State, was prior to the registration of the FIR and that the

Additional Chief State Examiner of Documents, C.I.D., Maharashtra State had observed (as quoted earlier in para 8 above) that the said opinion was subject to confirmation after the originals of Exhs.A-1 to A-4. Admittedly, on receipt of the said opinion dated 5th December, 2001, an FIR was registered as against the respondent-accused. Thereafter, during investigation, the original documents were seized from the respondent-accused under a panchanama and again on 18th January, 2002, the police of the Dahisar Police Station sent the original documents to the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State. Infact, a perusal of the report dated 12th September, 2002 of the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State shows that while resubmitting the documents certain Rules were not complied with and it was observed that earlier an opinion was already given in the said case. Infact, the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State had also in the said letter stated that 'if the Investigating Officer finds any difficulty he may please be directed to attend this office to clarify the difficulties'. It is pertinent to note, that the earlier opinion was given on the basis of the certified copies sent and not on the original documents. It is also a matter of record that thereafter no steps were taken

by the police of the Dahisar Police Station to bring the same to the notice of the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State.

11. It is only in 2015-2016 when the trial commenced and the applicant (original complainant) stepped in the witness-box that he realised that the originals have not been produced by the police. It is then that the applicant took steps to have the original documents placed on record. It cannot be disputed, that it is the sole responsibility of the police and the prosecution to ensure that the concerned original documents are placed on record and not of the applicant (original complainant). Similarly, merely because the trial has been expedited cannot be a ground to deny fair trial either to the applicant or to the respondent-accused. It is pertinent to note that the documents in question, were in possession of the police since 2002 and were placed on file of the learned Metropolitan Magistrate only pursuant to an order passed by this Court. The said documents of which forgery is alleged, goes to the root of the case and hence it is in the interest of justice the said original documents will have to be sent to the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State,

for obtaining his opinion. Accordingly, the following order is passed:-

ORDER

- i) The impugned order dated 11th October, 2017, passed by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai, in C.C.No.494/PW/2003, is quashed and set aside;
 - ii) The documents mentioned in Exhibit – 112, filed by the prosecution in C.C.No.494/PW/2003 be sent to the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State, for his opinion;
 - iii) On receipt of the said original documents, the Additional Chief State Examiner of Documents, C.I.D., Maharashtra State, to give his opinion as expeditiously as possible and in any event within 4 weeks from the date of receipt of the documents.
12. Rule is made absolute in above terms.
13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.