

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.262 of 2015

Vikas Bhuwal S/o Vijay Bhuwal, aged about 32 years, R/o-Behind Bhadrakali Temple, Nawapara, Police Station, Tahsil, Civil and Revenue District-Bemetara (CG)

---- Petitioner

Versus

Jai Prakash S/o Ramadhar Singh Parihar, aged about 30 years, R/o Village – Puran, Police Station, Tahsil, and Revenue District Mungeli, Civil District Bilaspur (CG)

---- Respondent

And

Cr.M.P.No.264 of 2015

Amit Kumar Malik S/o Jagbeer Malik, aged about 35 years, R/o – Village – Baiji, Police Station, Tahsil Civil and Revenue District – Bemetara (CG)

---- Petitioner

Versus

Jai Prakash S/o Ramadhar Singh Parihar, aged about 30 years, R/o Village – Puran, Police Station, Tahsil, and Revenue District Mungeli, Civil District Bilaspur (CG)

---- Respondent

For Petitioners	:	Mr.Vaibhav A. Goverdhan, Advocate
For Respondent	:	None present

Hon'ble Shri Justice Sanjay K. AgrawalOrder On Board15/04/2019

1. Since common question of law and fact is involved in these two petitions, they were heard together and are being disposed of by this common order.
2. The petitioners are facing trial for offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as 'the Act of

1881'). During pendency of that proceeding, the petitioners filed applications under Section 73 read with Section 77 of the Indian Evidence Act for examination of signature in the questioned cheque and contents of questioned cheque by handwriting expert, which has been rejected by the Judicial Magistrate First Class, Mungeli, against which, revisions were filed, which have also been dismissed, against which, these CrMP have been filed.

3. Mr.Vaibhav A. Goverdhan, learned counsel for the petitioners, would submit that in order to establish the defence, examination of such cheque by handwriting expert is absolutely necessary and learned trial Court could not have dismissed the applications on the ground that accused persons have not disputed the signature and contents of cheque, whereas it is the case of the petitioners/accused persons that they have not issued cheque and signature is forged.
4. I have heard learned counsel counsel for the parties and perused the documents appended with the petition with utmost circumspection.
5. Taking into consideration the nature of dispute i.e. criminal complaint under Section 138 of the Act of 1881, taking into consideration the stand taken by the petitioners that they have disputed the issuance of cheque and questioned the signature to be forged and further taking into consideration the submission of learned counsel for the petitioners, the impugned orders dated 4.9.2014 passed by the Judicial Magistrate First Class, Mungeli as

affirmed by the Additional Sessions Judge, Mungeli are hereby set aside. However, the petitioners are at liberty to get the questioned cheque examined by handwriting expert and produce the report before the trial Court as early as possible preferably within a period of three weeks from today.

6. The petitions are allowed to the extent indicated hereinabove. A copy of this order be sent to the concerned trial Court by E-mail/fax.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-