

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 637 of 2019**

Satish Singh, S/o Shri Jagdish Prasad Singh, aged about 56 years, R/o Kamal Colony, Balodabazar, District – Baloda Bazar – Bhatapara (C.G.)

----Petitioner/Appellant/Accused

Versus

Amit Soni, S/o Narrottam Soni, aged about 28 years, R/o Gaurav Path Marg, Behind Government Hospital, Balodabazar, District – Baloda Bazar – Bhatapara (C.G.)

---- Respondent/complainant.

For Petitioner	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent	: Mr. Suresh Kumar Verma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/05/2019

(1) The petitioner stood convicted for commission of offence under Section 138 of the Negotiable Instruments Act, 1881(henceforth, Act, 1881”), against which he preferred appeal under Section 374 of the Code of Criminal Procedure. During pendency of the appeal, he preferred application under Section 45 of the Evidence Act for examination of signature of the respondent on the agreement (Ex.D-1) by hand writing expert, which was rejected by the appellate Court on the ground that in the appellate stage, application under Section 45 of the Evidence Act cannot be entertained and, thus, the petitioner cannot be permitted to get the agreement (Ex.D-1) examined by the hand writing expert.

(2) Counsel for the petitioner submits that impugned order is bad and unsustainable in law, which is liable to be set aside.

- (3) On the other hand, counsel for the State would support the impugned order.
- (4) I have heard learned counsel appearing for the parties, and considered their rival submissions made hereinabove and went through the record with utmost circumspection.
- (5) The question for consideration would be whether the appellate Court, while hearing the appeal, can entertain the application under Section 45 of the Evidence Act ?
- (6) Section 391 of the Cr.P.C. provides for power and jurisdiction of the appellate Court to take further evidence, which states as under :-

“391. Appellate Court may take further evidence or direct it

to be taken – (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.”

- (7) As such, the appellate Court is empowered to take further evidence and application under Section 45 of the Evidence Act for permitting the petitioner to get the agreement (Ex.D-1) examined by hand writing expert ought to have been allowed by the appellate Court.

(8) Thus, in view of the express provision contained in Section 391 of the Cr.P.C., it cannot be held the appellate Court has no jurisdiction to entertain application under Section 45 of the Evidence Act at the appellate stage.

(9) Accordingly, impugned order dated 23.02.2019 is set aside. The matter is remitted to the appellate Court for considering the application under Section 45 of the Evidence Act afresh on its own merit after hearing the parties. The Appellate Court shall proceed further after hearing and deciding the application under Section 45 of the Evidence Act.

(10) Parties are directed to appear before the appellate Court on 18th June, 2019.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

