

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

CRIMINAL WRIT PETITION NO.1033 OF 2019

Prakash Mohanlal Mundada ... Petitioner

Vs

Deepak Renasa Athani & anr. ... Respondents

**With
CRIMINAL WRIT PETITION NO.1034 OF 2019**

Prakash Mohanlal Mundada ... Petitioner

Vs

Sandip Anil Chavan & anr. ... Respondents

Mr.V.B. Shivarkar for the Petitioner

Mr.N.B. Patil, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: APRIL 8, 2019

P.C.:

1. Upon urgent mentioning, taken on Production Board.
2. These two Writ Petitions are directed against the two orders dated 21.1.2019 passed by the learned JMFC, Sangli, in summary cases where the applicant/accused is tried under section 138 of

the Negotiable Instruments Act thereby rejecting the applications for sending the disputed cheques to the hand-writing expert.

3. The learned Counsel for the petitioner submits that the petitioner is challenging his signatures which are appearing on the respective disputed cheques. Therefore, it is necessary to send those cheques to the hand-writing expert.

4. The learned JMFC has rejected the said applications. He submits that the entire evidence is over and at the time of recording of statement of the accused under section 313 of the Code of Criminal Procedure, the two applications for sending the cheques to the hand-writing expert were preferred and are rejected. He submits that the reasoning given by the learned Magistrate and thereafter, the finding given by the learned Sessions Judge, are erroneous and, therefore, the notices be sent and the orders be stayed, pending these petitions.

5. Considered the prayer made made by the petitioner/accused of sending the disputed documents to the hand-writing expert. I am of the view that there is no need to issue notices to the respondent/original complainant. The signatures on the disputed

cheques can be compared and verified by the learned Judge himself with a naked eye. The truth whether the petitioner/accused has signed the respective cheques can be ascertained on the basis of the other circumstantial and oral evidence tendered by the complainant and also by the accused. Moreover, the original burden of proving the fact of issuance of cheques and the signatures thereon lies on the complainant. It is to be noted that in many cases filed under section 138 of the Negotiable Instruments Act there is an increasing trend of seeking order of sending the disputed cheques to the hand-writing expert. The opinion of the hand-writing expert can be admissible under section 45 of the Evidence Act. However, the said opinion based on the science of hand-writing is not so accurate and with precision like the opinion of a ballistic expert or DNA. It is physically impossible for the trial Court which is attending and trying the cases under the Negotiable Instruments Act to go on sending all the disputed cheques to the hand-writing expert. It is a summary trial. Hence, both the petitions are dismissed summarily.

(MRIDULA BHATKAR, J.)