

Vidya Amin.

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

**CRIMINAL APPLICATION NO. 734 OF 2018
WITH
CRIMINAL APPLICATION NO. 736 OF 2018
WITH
CRIMINAL APPLICATION NO. 741 OF 2018**

Naveenkumar Hazari ... Applicant

VS.

Mahendra Mangilal Choraria & Anr. ... Respondents

Mr. Hrishikesh Mundargi I/b. Hardik Vyas, Advocate for the applicant.

Mr. Omar Khaiyam Shaikh, Advocate for respondent no. 1.

Mr. N.B. Patil, APP for the respondent no. 2/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 5th April, 2019**

P.C. :

These three Criminal Applications under section 482 of Cr. P.C. are referred challenging the three orders passed by the learned Sessions Judge. In order to get quick grasp of the matter, it is useful to reproduce the number of proceedings, date of the orders and orders under challenge in the following chart:

High Court Proceedings	Sessions Court proceedings	Metropolitan Magistrate proceedings
Criminal Application No. 741 of 2018	Cri. Revision Application No.1012 of 2016 dated 26/09/2017	C.C. No. 1527/SS/2015 dated 07/07/2016 (below Exhibit 87)

Criminal Application No. 736 of 2018	Cri. Revision Application No. 1011 of 2016 dated 11/12/2017	C.C. No. 1527/SS/2015 dated 08/08/2016 (below Exhibit 91)
Criminal Application No. 734 of 2018	Cri. Revision Application No. 349 of 2017 dated 26/09/2017	C.C. No. 1527/SS/2015 dated 18/02/2017 (below Exhibits 75 and 80)

2. The applicant is an original complainant and the respondent no. 1 is the accused. The applicant has filed Criminal case No. 1527/SS/2015 under section 138 of Negotiable Instruments Act before the learned Magistrate, 70th Court, Mazgaon at Sewree. The cheque of Rs.4,60,000/- is the disputed cheque and in the course of evidence, the applicant/complainant relied on one handwriting receipt which, as per the case of the complainant, was issued by the accused and the execution of said receipt is denied by the accused and that is also a disputed document. After completion of the evidence of the complainant, the statement of accused under section 313 of Cr. P.C. was recorded. At that time, the accused wanted to lead evidence so the respondent/accused moved an application of sending two documents to handwriting expert and the Applications are marked as Exhibits 75 and 80. The accused wants to send the said disputed receipt of

Rs.4,60,000/- so also one MOU to handwriting expert. The learned Magistrate rejected those two applications by orders dated 18th February, 2017 (Exhibit 75 and 80) and 7th July, 2016 (Exhibit 87). However, both the Applications of sending the two documents to handwriting expert were allowed by the learned Sessions Judge by common order dated 26th September, 2017 in two Criminal Revision Application Nos. 349 of 2017 and 1012 of 2016 and those two orders are challenged.

3. The respondent/accused also moved Application Exhibit 91 giving the list of 18 witnesses that he wanted to examine in his defence. The learned Metropolitan Magistrate rejected the said Application by order dated 8th August, 2016 but allowed the accused to call statement of the bank accounts of respondent No. 2/complainant Naveen Kumar Hazari and his company M/s. Agjaivi Financial Service Pvt. Ltd., hence, the said order is also challenged in this Application No. 736 of 2018.

4. Heard the submissions. Perused the relevant documents and orders. At the outset, the order dated 11th December, 2017 passed by the learned Additional Sessions Judge, Greater Mumbai

allowing to call the statement of the bank account of respondent no. 2/complainant and his company is maintained with following modification that the said accounts are to be called of the relevant period when the loan was allegedly given. With this, Criminal Application No. 736 of 2018 is disposed of.

5. I have perused the disputed documents. MOU is unsigned, undated, some gaps are filled in and there are some handwritten filled in gaps. There is no use and purpose of sending this MOU to handwriting expert. Similarly, truthfulness of the disputed receipt also, as held by the learned Magistrate, can be ascertained on the basis of the circumstances and evidence adduced by the parties. The view taken by the learned Metropolitan Magistrate is legal and correct. In all the cases under section 138 of Negotiable Instruments Act, the cheque or receipt is always disputed. These all documents need not to be sent to handwriting expert except a very special case is made out. I do not find any such reason to send these documents to the handwriting expert. It is also to be noted that the opinion of the handwriting expert which is admitted under section 45 of the Evidence Act cannot be considered as the opinion with 100% precision. The orders dated 26th September,

2017 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application nos. 349 of 2017 and 1012 of 2016 are set aside.

6. Criminal Revision Application nos. 734 of 2018 and 741 of 2018 are allowed.

(MRIDULA BHATKAR, J.)