

CRIMINAL WRIT PETITION NO. 3337 OF 2018

VS.

R.C.C. No. 4 of 2004 against the respondent in which the process is issued under sections 120B, 420, 466, 467, 468 r/w. 34 of Indian Penal Code. The matter is fixed for evidence before charge and the evidence is recorded in the said matter. Thereafter the application is moved by the petitioner/original complainant for sending the matter to the handwriting expert after obtaining the specimen of handwriting and signatures of the respondents/accused.

3. The learned counsel for the petitioner/original complainant has submitted that the case of the complainant is based on those forged documents and as the respondents/accused have denied the signatures on the documents, so also making of forged documents, it is necessary to obtain the opinion of handwriting expert on the point of forgery. The learned counsel has submitted that there is a delay and it can be condoned. In support of his submissions, the learned counsel relied on the following decisions:

- (i) Judgment of Single Judge of Bombay High Court, Nagpur Bench, in the case of **Shyam Vitthal Udawant vs. State of Maharashtra & Anr.**, reported in 2014 ALL MR (Cri) 1274.

- (ii) Judgment of Single Judge of Bombay High Court (Goa Bench) in the case of **Anthony Carvalho vs. Mohammad Naushad**, reported in 2009 ALL MR (Cri.) 1035.

The learned counsel submitted that the view taken by the learned trial Court and the learned Sessions Court that the Judge can compare the disputed documents with naked eyes and can decide whether the document is forged or not. This view is correct but if the opinion of handwriting expert is procured, it is definitely to be given the better weightage than such kind of comparison made by the learned Judge. The learned counsel also relied on judgment of Hon'ble Supreme Court in the case of **The State (Delhi Administration) vs. Pali Ram**, reported in (1979) 2 SCC 158. He submitted that in the interest of justice, these documents are required to be sent to handwriting expert opinion and no prejudice will be caused to the accused, as there will be delay in the matter filed by the complainant himself. The orders of the lower court are to be set aside.

4. The learned counsel appearing for the respondents/ accused, while opposing this Petition, has submitted that there is

unexplained delay and therefore, it cannot be condoned for any other reason. He submitted that the evidence before charge is already recorded by the learned Judicial Magistrate First Class and therefore, the application made by the petitioner/original complainant at very late stage is rightly rejected. He further submitted that the rulings which are relied upon by him on the point of delay and regarding appreciation of evidence is not of any use.

5. In the case of **The State (Delhi Administration) vs. Pali Ram** (*supra*), the Supreme Court, on the scope and powers of the Court under section 73 of Evidence Act, 1872, mainly discussed the issue in respect of obtaining specimen handwriting of the accused when the legislature is in seisin of the case and the Supreme Court held that considering the words used in Section 73 by the legislation, i.e., “for the purpose of enabling the Court to compare”. The Supreme Court held that this means the proof of handwriting and decision on it is after comparing with the documents. Even though the Court relies on own eyes to compare the handwriting with the dispute one, the Court needs two documents before it and therefore, the Magistrate’s order directing

the accused persons to sign before him and obtaining the documents was legal and the Magistrate has not acted beyond the scope of Section 73. Therefore, the Supreme Court has set aside the order passed by the High Court and upheld the order of the Magistrate.

6. It is true that in the said judgment, the Supreme Court has held that though there is no legal bar for the Judge using his own eyes to compare the disputed handwriting with the admitted handwriting, the Judge should, as a matter of prudence and caution, hesitate to pass his finding with regard to the identity of the finding, which confirms the prosecution case against the present accused of an offence, solely on comparison made by himself. Thus, it is a direction given by the trial Court how cautiously its power to compare with naked eyes to be used at the time of appreciation of the documents and the evidence in respect of such disputed documents. However, the Supreme Court has also mentioned that there is no bar in using such powers.

7. In the present case, there is an issue of considerable delay. The disputed documents are prepared and signed in the year

1995. The criminal case is filed in the year 2004. Since 2004 till 2014, no such application for obtaining report of handwriting expert was moved. Such application of sending the documents to handwriting expert, i.e., Exhibit 134 was made on 6th May, 2014 and therefore, the trial Court has rightly rejected the same. The submissions of the learned counsel for the respondent that the applicant is moved without giving any sufficient cause for delay and it is unexplained delay is correct.

8. The learned counsel Mr. Shah for the petitioner has relied on two judgment in the cases of **Shyam Vitthal Udawant** (*supra*) and **Anthony Carvalho** (*supra*). However, in both the matters, there is no such delay of 10 years like in the present case.

9. In the case of **Shyam Vitthal Udawant** (*supra*), the cross-examination of complainant was over on 5th March, 2012 and the application was preferred after 8 months, i.e., 29th December, 2012. Similar is the case of **Anthony Carvalho** (*supra*). There was no such inordinate delay as in the matter in hand. Moreover, in both the cases, accused were prosecuted under section 138 of Negotiable Instruments Act and signatures on the cheques were disputed.

10. In the present case, in the order of learned Sessions Judge and District Judge, Satara has mentioned that the fact of forgery is based on the document submitted to the Charity Commissioner, Pune for sanctioning of change report. There is a finding given by the Charity Commissioner in favour of the present petitioner, i.e., complainant. In view of all these facts and the law laid down and also in view of Section 73 of the Evidence Act and the delay caused, I am of the view that the orders passed by the learned Judicial Magistrate First Class and by the learned Additional Sessions Judge cannot be faulted with. The orders are legal and hence the Writ Petition is dismissed.

11. The learned trial Judge to proceed with the matter and try to expedite the matter, as the alleged offence is of 1995.

(MRIDULA BHATKAR, J.)