

Anand

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

WRIT PETITION NO. 5191 OF 2018

Rajiv J. Deokar

.Petitioner

Vs.

The State of Maharashtra & anr.

.Respondents

Mr. V. B. Shivarkar i/b. Mr. Manmohan Sharma, Advocate, for the
Petitioner

Mr. A. R. Patil, APP, for the Respondent No. 1 – State

Mr. Samir Sarambalkar, Advocate, for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.

DATE : 07.11.2019

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 07.01.2017 passed by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai, on an Application filed by the Petitioner herein, for sending the documents to the Forensic Science Laboratory, as well as the order dated 05.09.2018 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application preferred by the Petitioner against the said order dated 07.01.2017.

3. Perused the papers. The Respondent No. 2 is the Original Complainant, who has filed a Criminal case, being Criminal case No.

5116 / SS / 2009 in the Court of the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai, alleging an offence punishable under Section 138 of the Negotiable Instruments Act. After process was issued, the Petitioner appeared before the learned Magistrate. The Petitioner's Plea was recorded. The Respondent No. 2 filed an Affidavit of his examination-in-chief and thereafter, he was cross examined.

4. On the day, when the cross examination was over i. e. on 25.11.2011, the Petitioner filed an Application praying therein, that the cheque be sent for examination to the forensic expert, for determining the age of the ink of the signature of the drawer on the said cheque as well as the age of the ink of the amount in words and figures. The learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai vide order dated 30.06.2012 rejected the said Application by a detailed order. The said order is on page No. 61 of the Application. It is pertinent to note that the said order dated 30.06.2012 has attained finality, inasmuch, as the same has not been challenged by the Petitioner before any forum.

5. It appears that subsequently i. e. on 17.04.2014, the Petitioner preferred another Application under Section 45 of the Indian Evidence Act and again prayed therein that the cheque dated 18.08.2009 be sent to the Central Forensic Science Laboratory, New Delhi for determining the age of the ink used for signature of the accused and the

age of the ink used to fill up the other details on the said cheque. The said Application was rejected by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai by a detailed order dated 07.01.2017. The said order dated 07.01.2017 was challenged by the Petitioner in revision before the learned Additional Sessions Judge, Greater Mumbai. The learned Additional Sessions Judge dismissed the said revision vide order dated 05.09.2018. As noted above, the first Application preferred by the Petitioner on 25.11.2011 seeking the same prayers was decided by the learned Metropolitan Magistrate on 30.06.2012 and as such the said order had attained finality, as the Petitioner had not challenged the said order.

6. Considering the aforesaid, there is no merit in the aforesaid Petition. No infirmity can be found in the orders passed by the learned Additional Sessions Judge and the learned Metropolitan Magistrate. Hence, the Petition is dismissed. It appears that the Petitioner is trying to delay the trial.

7. Since the case is of the year 2009, the trial of the Petitioner is expedited. The learned Metropolitan Magistrate to conclude the case as expeditiously as possible and in any event within a period of six months from the date of receipt of this order. All parties to co-operate in the conduct of the trial.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)