

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

CRIMINAL APPLICATION NO.1362 OF 2018

Dilip Shankar Mulay

...Applicant

Versus

Pradip Shankar Mulay & Anr.

...Respondents

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Mr.Dilip Shankar Mulay- Applicant in person.

Mr.Sandesh Deshpande for Respondent No.1.

Mr.N.B.Patil, APP for Respondent No.2-State.

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CORAM : S.S.SHINDE J.

DATE : 04 JULY 2019

P.C.:

1. Heard the applicant, who appears in person, and learned Counsel appearing for contesting respondent.

2. By way of this Application, the applicant seeks limited relief. He submits that in paragraph No.2 of the impugned order dated 28.06.2018, the learned 4th Judicial Magistrate First Class, Thane has mentioned about sending specimen admitted handwriting of executor Mr. Sudhakar V. Dharav on Will dated 03.09.1996, serial No. 5740, which is kept in custody of Nazir of JMFC Court, Thane. However, in paragraph No. 7 of the impugned order, instead of mentioning the word “executor”, the

learned Magistrate has mentioned the word “accused”. Therefore, the applicant prays that the word “accused” appearing in paragraph No.7 of the impugned order be substituted by the word “executor”. He submits that so far as sending disputed handwriting and admitted handwriting of accused for analyses and comparison is concerned, this Court had already in Writ Petition No. 101 of 2012 and another connected Petition, was pleased to issue the directions to send handwriting of the accused for comparison to handwriting expert.

3. On the other hand, learned Counsel appearing for contesting respondent submits that the present Application is filed by the applicant just to prolong the proceedings pending before the learned Magistrate. He further submits that there appears to be mistaken in paragraph No. 7 of the impugned order in as much as instead of mentioning the word “executor”, the word “accused” is mentioned. Hence, this Court may pass an appropriate order.

4. It appears that though the applicant applied before the Sessions Court, Thane for recalling the aforesaid order, however, the said Court declined to entertain the prayer of the applicant.

5. As submitted by the applicant that the directions have already been issued by High Court, Bombay for sending handwriting of accused to handwriting expert, in that respect no further directions are necessary.

6. While narrating facts from the Application filed by the applicant, at exhibit 189, the learned Magistrate in paragraph No.2 of the impugned order observed that, the present application filed by complainant for sending disputed handwriting and admitted handwriting of accused for analyses and comparison by handwriting expert along with specimen admitted handwriting of executor on Will dated 03.09.1996, Sr. No. 5740 of Mr.Sudhakar V. Dharap, which is kept in custody of Nazari Court Thane and also prayed for appointment of special bailiff.

7. The applicant has stated that handwriting of the accused has already been sent to handwriting expert for comparison of handwriting and sending report to that effect. Hence, there is no need to once again send handwriting of the accused to handwriting expert. The aforesaid position is not disputed by learned Counsel appearing for respondent No.1. Therefore, keeping in view the submissions made across the bar by applicant and learned Counsel appearing for respondent No.1, it

appears that the prayer of the applicant before the learned Magistrate was for sending specimen admitted handwriting of executor Mr.Sudhakar V. Dharap on Will dated 03.09.1996, Sr. No. 5740. It appears that by mistake, the learned Magistrate in clause No.3 of the operative part of the impugned order, has mentioned “admitted handwriting of accused” instead of “admitted handwriting of executor”. There appears to be an inadvertent mistake. In that view of the matter, the order passed by learned 4th Judicial Magistrate First Class, Thane to the extent of mentioning “admitted handwriting of accused” in clause No. 3 of the operative part of the order needs to be interfered with, and accordingly it is directed that the word “accused” appearing in clause No.3 be deleted by adding the word “executor” in its place.

8. In the light of above, the learned 4th Judicial Magistrate First Class, Thane, is directed to correct clause No.3 of the operative part of the order dated 28.06.2018 and issue further directions accordingly. In case of any difficulty faced by the learned Magistrate to implement the aforesaid directions, he would be at liberty to make reference to this Court for clarification.

9. In view of above observations, Criminal Application is allowed and the same stands disposed of accordingly.

(S.S.SHINDE, J.)