

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 979 OF 2019

M/s. Sai Auto Agencies, thr. Its Partner

..vs..

State of Maharashtra, thr.its Police Station Officer and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.N. Badhe, Advocate for petitioner.

Shri Gayatri R. Diwe, Advocate for respondent no. 2.

Shri A.M. Balpande, Additional Public Prosecutor for
respondent-State.

CORAM : VINAY JOSHI, J.

DATED : 11/03/2020

Heard learned Counsel for the petitioner, for
respondent no. 2 and learned Addition Public Prosecutor
for respondent-State.

2. At the instance of petitioner, the Badnera Police
registered crime vide Crime No. 9/2012 relating to the
offence punishable under Section 406 and 420 read with
34 of the Indian Penal Code, 1860 against respondent no.
2 and other persons. On the basis of said First Information
Report, Police carried investigation and on completion
filed charge-sheet in terms of Section 173(2) of the Code
of Criminal Procedure, 1973. It is informed that during
course of the investigation itself the disputed cheque
allegedly signed by the accused alongwith specimen
signatures were sent to the Handwriting Expert's report.
The record indicates that the Expert has forwarded his
report on 17.01.2017 opining that the opinion cannot be
given on the subject. In the wake of such position, the

learned Additional Public Prosecutor has filed application Exhibit 43 in Criminal Case bearing R.C.C. No. 1008 of 2012 with a request to re-sent disputed cheque alongwith three other documents in the form of letters dated 13.09.2009, 05.03.2010 and 15.06.2011 for Expert's reports. Learned Chief Judicial Magistrate has rejected said request for the reasons stated in the impugned order.

3. The petitioner submits that the comparison of impugned cheque alongwith the signatures on these three letters is a crucial aspect which ought to have been sent for Expert's report. It is submitted that no prejudice would be caused to other side, if, Expert opinion is sought on the issue. The other side resisted the request by stating that the Police are invested with the powers of further investigation, there is inordinate delay in moving to Court and concern application was not filed by the Investigating Officer. To substantiate said contentions reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel and ors. reported in AIR 2017 SCC 774*.

4. The offence was registered at the instance of First Information Report lodged on 13.01.2012. During the course of investigation disputed cheque was sent for Handwriting Expert's report alongwith specimen signature. Obviously, the charge-sheet was filed in the year 2012 and the case was pending in the Court of the Magistrate for six years. The documents i.e. above referred 3 letters were informed to be part of the charge-sheet meaning thereby they were within the knowledge of the parties. In other words, they were not ceased from the custody of the

accused. Merely because, Expert's opinion does not favour to the petitioner, would not provide a ground to re-sent for examination unless subsequent material requires to do so. Learned Chief Judicial Magistrate observed that, neither the accused is author of those letters nor they were ceased from his possession. The letters were already in the proceedings and it was for Investigating Officer to take a call at the earliest rather during the course of investigation. After long gap of five years that too after receipt of Expert's report without any further material, there is no reason to once-again take chance. It would only waste the time as the case is pending from 2012. There is no justification in re-sending disputed cheque for re-examination by Expert. The impugned order is well reasoned which calls no interference.

5. However, it is made clear that the Magistrate at liberty to consider such request if, made after recording of evidence and decide it as he deems fit.

6. With such observations, Writ Petition stands dismissed.

JUDGE

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