

Court No.  
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Item 7  
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05.02.  
2021

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Revisional Jurisdiction**

Before:

**The Hon'ble Mr. Justice Jay Sengupta**

**C.R.R. 364 of 2020**

Dataji Rice Mills Private Limited & Ors.

Versus

The State of West Bengal & Anr.

For the Petitioners : Mr. Aniruddha Bhattacharya

For the Opposite Party : Mr. Ayan Bhattacharya  
Mr. Amit Muhuri  
Ms. Rituparna Chatterjee

Heard on : 05.02.2021

Judgement on : 05.02.2021

**Jay Sengupta, J. :**

This is an application challenging an order dated 09.09.2019 passed by the learned Additional Sessions Judge, Fast Track, 1<sup>st</sup> Court, Bichar Bhavan, Calcutta in Criminal Revision No. 136 of 2019, thereby dismissing the said revision and affirming the order dated 08.04.2019 passed by the learned Metropolitan Magistrate, 20<sup>th</sup> Court, Calcutta in Complaint Case No. CS/0059534 of 2016 under Sections 138 and 141 of the Negotiable

Instruments Act.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the accused in this case. The complainant had relied on a money receipt purportedly signed by the accused to substantiate the consideration behind the cheque-in-question. An application was made by the petitioners on 01.03.2019 to have the signature on the money receipt compared with admitted signature of the accused by a handwriting expert. Thereafter, the accused was examined under Section 313 on 07.03.2019. The learned Magistrate went on to compare the signature of the accused on the 313 sheet with his signature on the Vakalatnama, the application for bail and the application under Section 205 of the Code and came to a finding that the accused had purportedly made a different signature in the Section 313 sheet. However, the signature on the money receipt was not compared with. The learned Magistrate rejected the application to send the matter to a handwriting expert. This order was affirmed by the learned Session Judge. The learned revisional Court further erred on facts in holding that the application was made after the examination of the accused under Section 313 of the Code. In any event, it will be open to the accused to make

such a prayer even after the examination of the accused under Section 313 of the Code. Reference is made to paragraph 8 of the supplementary affidavit by the petitioners and it is submitted that at the time when a resolution of the local Bar Association not to pass any adverse order was in force, the learned trial Court closed the evidence of the defence and the petitioners were constrained to move a revisional application before the learned Session Court. The learned Session Court was pleased to set aside the order and remand back the matter for further arguments.

Learned counsel appearing on behalf of the complainant-opposite party submits as follows. During pendency of the present revisional application, the petitioners participated in the trial and did not adduce any defence evidence. At this stage, the petitioners want the clock to be set back so that a different complexion could be given to the entire defence case. The learned Magistrate did invoke Section 73 of the Evidence Act and compare the signature of the petitioners on admitted documents. As such, there were no need to send the documents in question to a handwriting expert to examine. The only reason for such an application to seek opinion of a handwriting expert was to delay the

proceeding.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the revision petition and the supplementary affidavit.

It appears that the petitioners have challenged the order refusing to send the document in question to a handwriting expert quite sometime ago. The revisional application had remained pending. Even if, the petitioners participate in the trial in the meantime or, for that matter, are under compulsion to do so, it shall not preclude this Court from deciding the revisional application on merits.

The petitioners have questioned the signature on a money receipt which forms the basis of consideration behind the cheque in question. As such, it would be appropriate if the signature is sent to a handwriting expert for comparison.

The learned Magistrate purportedly invoked under Section 73 of the Evidence Act and tried to compare a signature of the accused present on different documents. However, it appears that he did not compare the signature of the accused present on the alleged money receipt. Therefore, this exercise was a futile one.

The learned revisional Court seems to have erred in holding that the application for seeking the handwriting expert's opinion was filed after the examination of the accused under Section 313 of the Code. In any event, even after examination of the accused under Section 313 of the Code, an accused can seek the opinion of a handwriting expert. On this reliance placed on Kalyani Baskar -vs- M.S. Sampooram reported in (2007) 2 SCC 258.

If the purported money receipt is not sent to an expert for comparison, it would amount to denying a fair trial to the accused.

In the facts and circumstances of the particular case, I think it should appropriately to allow the application of the petitioners to send the money receipt to a handwriting expert for comparing the signature of the accused with those in admitted documents.

Accordingly, the impugned judgment and order and the corresponding earlier order of the learned Trial Court are set aside and the learned Trial Court is directed to send the money receipt in question to a handwriting expert for comparison with the signature of the accused present in admitted documents. The exercise has to be

completed as expeditiously as possible. The learned Trial Court is requested to conclude the proceeding at the earliest without granting any unnecessary adjournment to any of the parties and keeping in view the statutory stipulation regarding completion of a proceeding under the Negotiable Instruments Act.

With these observations, the revisional application is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

**(Jay Sengupta, J.)**