

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1768 OF 2021

Shri Dattakrupa Shikshan Sanstha, Latur
through its Secretary
Shri Shripad Ganpatrao Patki,
Age : Major, Occu: Retired,
R/o. Engineer Colony, AUSA Road,
Near Sadanand School, Latur.

... **Petitioner**

VERSUS

Shri Ramchandra Khando Kulkarni
Age : Major, Occu: Retired Professor
R/o. Dattanagar South, AUSA Road, Latur

... **Respondent**

...

Advocate for Petitioner : Mr. Amarsinha D. Sonkawade
Advocate for Respondent : Mr. D.S. Mali

...

CORAM : MANGESH S. PATIL, J.

DATE : 24.08.2021

ORAL JUDGMENT :

Heard. Rule. The Rule is returnable forthwith with the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner is the reporting Trustee. He is aggrieved and dissatisfied by the rejection of Application (Exhibit-166) by the learned Assistant Charity Commissioner thereby refusing to send the documents to the handwriting expert soliciting an opinion.

3. The learned advocate for the petitioner would submit that the respondent by indulging in forgery has pretended to have enrolled few

members, however, the applications do not bear the signatures of the members and by indulging in such forgery he is opposing the change by submitting that the change which has been effected by virtue of a meeting was not legal since all the legal members were not notified and participated. In order to substantiate such allegations of the petitioner a request was made to refer the papers/records soliciting an opinion of the handwriting expert.

4. The learned advocate would further submit that the impugned order rejects the request merely on account of delay and further by observing that a recourse under Section 73 of the Indian Evidence Act can be had rather than soliciting an expert opinion. Such approach of the learned Assistant Charity Commissioner is not legal. Whenever the allegations regarding forgery are put up, it is appropriate to refer the matter to the handwriting expert as has been laid down in the case of **T. Nagappa Vs. Y.R. Muralidhar; (2008) 5 SCC 633** and **V.P. Sankaran Vs. R. Uthirakumar; 2009 SCC OnLine Mad 745**.

5. The learned advocate for the respondent would submit that there is no error in the impugned order. The change report was filed way back in the year 2011. Even the evidence in that matter was closed in the year 2015 and the request was made after a long slumber. No plausible explanation for considering to the request after lapse of such an enormous time was given. The change report has been awaiting decision since long.

6. The learned advocate would further submit that the respondent

had also solicited an opinion of the handwriting expert albeit a private one and had solicited an order by filing Application (Exhibit-164) to permit it to be proved by examining the handwriting expert. However, even his Application (Exhibit 164) has been turned down by the learned Assistant Charity Commissioner.

7. I have considered the rival submissions and perused the record. As can be seen, the learned Assistant Charity Commissioner has primarily rejected the Application on two counts, firstly, because of the delay in making the request and filing of the Application after the evidence was closed and, secondly, on the ground that instead of referring the matter to an expert's opinion, a recourse can be had to Section 73 of the Indian Evidence Act.

8. Obviously, the course to be adopted by taking aid of Section 73, though it is an enabling provision, should be resorted to in exceptional circumstances. It only enables the Court to compare the signatures. As against this an opinion of the expert is based on some scientific basis and would carry more weight. Therefore, the approach of the learned Assistant Charity Commissioner that instead of soliciting an opinion of the handwriting expert he can resort to Section 73 of the Indian Evidence Act is not a correct.

9. However, it is a matter of record that the change report has been filed in the year 2011. The evidence is closed in the year 2015 and no plausible explanation can be found in the Application (Exhibit-166) as to

why no such request was made at some earlier point of time. Therefore no exception can be taken to the observation of the learned Assistant Charity Commissioner that the Application was filed belatedly.

10. Apart from the above state affairs, a bare perusal of the Application (Exhibit-166) shows that it is as vague as it could be. Though several allegations have been levelled against the respondent, the Application is conspicuously silent as to which exactly from out of the record possessed by the respondent is to be referred for an expert opinion. It has been vaguely mentioned that the proceeding, noticed book and concerned Applications from 1995-2005 be referred to the handwriting expert. It is to be borne in mind that if the record was already on the file specific and precise foundation ought to have been made in the evidence to question a specific document or documents. Simply saying that the entire record is forged one would not suffice. Whenever an opinion is to be sought from a handwriting expert, the documents which are in dispute i.e. the questioned documents have to be specifically put to him. No such clear request is being made in this Application (Exhibit-166). This in my opinion would be an additional reason to justify the impugned order.

11. The decisions being relied upon by the learned advocate for the petitioner in the case of **T. Nagappa** (supra) is in respect of a proceeding coming under Section 138 of the Negotiable Instruments Act where the dispute was as to who had actually filled in the contents of the cheque. The request in such matter could be specific and would go to the root of the

charge. The decision cannot be pressed into service in the matter in hand.

12. Considering all the aforementioned facts and circumstances, there is no error or illegality in the impugned order.

13. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

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