

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 357 of 2017

Amulya Kumar Samal

...

Petitioner

Mr. B.Tripathy, Advocate

-Versus -

Bharat Kumar Samal

....

Opposite Party

Mr. Basudev Pujari, Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

18.11.2022

Order No.

13.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the Opposite Party.
3. The petitioner is aggrieved by the Order dated 15.04.2017 passed by the learned J.M.F.C., Cuttack in 1.C.C. Case No. 612 of 2010 whereby the application filed by the petitioner, who is the accused in Court below, under Section-243 of Cr.P.C was rejected. By means of such petition the accused wanted the handwriting/signature appearing in the cheques in question to be examined by Handwriting Expert. It is the case of the petitioner that he had never issued the cheques in question to the complainant-Opposite Party and that the handwriting/signature appearing therein were forged by him only to make an unlawful game.
4. In course of hearing, this Court has perused the original reply submitted by the Advocate for the accused in response to the legal notice sent by the complainant prior to institution of the complaint wherein it is clearly stated that his client (accused) never put signatures or date on the cheques as

alleged. During cross-examination of the complainant, it has been suggested to him by the defence that the handwriting and ink used in writing in the cheques differs from other connected documents to which he has admitted and it has been suggested to him that the signatures on the cheques is not of the accused. In fact, under Paragraph-40 of the cross examination under query, the complainant is stated that he does not have any objection if the accused sends his signature to be examined by the Handwriting Expert.

5. Learned counsel for the Opposite Party has contended that had the cheques been dishonoured on account of the discrepancy of the signature, the Bank would have indicated such reason in the cheque dishonoured memo. It is further contended that even otherwise it is open to the accused to examine the Branch Manager to prove the signature on the cheque and to say if there is any discrepancy noticed therein.

6. Perusal of the impugned order reveals that the learned Court below has held that since the cheques were not dishonoured on account of any discrepancy in the signature but due to closure of the account it is not necessary to send the cheques to the Handwriting Expert. Learned Court below has also held that the Branch Manager of the Bank would be competent to throw light on the same.

7. After perusing the impugned judgment and on consideration of the rival contentions put forth before this Court, it appears that the learned Court below has misread the purport of the petition filed by the accused inasmuch as it is not his case that the cheques were dishonoured due to

discrepancy in signature but that he had never issued the cheques to the complainant. It is his further case that the handwriting and signature on the cheques in question were forged as already stated. Such plea has been taken by the accused in reply to the legal notice submitted by his lawyer as also while cross-examining the complainant. The dispute boils down to the question whether the accused had issued the cheques to the complainant in the first place. While it is certainly open to the accused to examine the Branch Manager, if he so deserves, but he not being an expert may not be able to conclusively state anything in this regard. For the ends of justice therefore, it would be proper if the cheques in question are examined by the Handwriting Expert for opinion as regards the claim of the accused that the signatures and handwriting appearing therein do not belong to him.

8. In such view of the matter, the impugned order is set aside. The learned Court below is directed to pass appropriate orders to send the cheques in question for examination by the Handwriting Expert.

9. Accordingly, the CRLREV is disposed of.

10. Urgent certified copy of this order be supplied as per rules.

(Sashikanta Mishra)
Judge