

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

CRIMINAL WRIT PETITION NO. 4541 OF 2021

Pradeep Narottamdas Harsora	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Ms. Dimple Ketan Shah for the Petitioner

Ms. P. P. Shinde, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
TUESDAY, 11th JANUARY 2022

P.C. :

1 Heard learned counsel for the petitioner.

2 By this petition, the petitioner has impugned the order dated 17th February 2021 passed by the learned Metropolitan Magistrate, 40th Court, Girgaum below Exhibit 593 in CC No. 108/PW/2005, by which, the learned Judge rejected the petitioner's application seeking permission to allow the handwriting expert (defence witness) to inspect and take photographs of certain documents in order to give expert opinion and thereafter to appear as a defence witness.

3 Learned counsel for the petitioner submits that the learned Judge was under the impression that the petitioner wanted the handwriting expert, as a defence witness, to take samples of the disputed and admitted handwriting and signatures, which was not the case. She submits that even the observations made by the learned Judge in the impugned order cannot be sustained.

4 Perused the papers. The petitioner has been arraigned as an accused along with two others, for the alleged offences punishable under Sections 467, 468, 471, 420 read with 20 of the Indian Penal Code. After investigation, charge-sheet was filed and charges were framed as against the petitioner and other co-accused. The prosecution examined eight witnesses in support of its case, including a handwriting expert. Cross-examination of the handwriting expert, who was examined as a prosecution witness, was declined by the petitioner's advocate and the same is not in dispute. After the prosecution closed its evidence, the statement of the petitioner/accused and others came to be recorded under Section 313 of the Code of Criminal Procedure. Thereafter, the petitioner filed an application (Exhibit 562) and sought to examine four witnesses in support of its case i.e. (i) Chandrika Das, (ii) Kalpana Dodhia, (iii) S. K. Kunder and (iv) Handwriting expert.

By the said application, the petitioner prayed that witness summons be issued to the said four witnesses. The learned Judge was pleased to allow the said application, after observing that it was the right of the defence to adduce evidence. The said application was allowed vide order dated 24th February 2020.

5 After the said application was allowed, the petitioner's advocate filed another application (Exhibit 593) dated 3rd February 2021. The said application reads as under:

“On behalf of the Accused No. 1 & 2 it is submitted as under:-

- 1. That Defense seeks to examine Handwriting Expert named at Sr. No.3 in the List of Defence witness.*
- 2. The Handwriting Expert to prepare his Expert Opinion he should be permitted to inspect and take photographs of the following samples :-*
 - i. Signatures of first informant from documents containing signatures and handwriting from court proceedings papers.*
 - ii. Signatures of first informant from Original passports from the year 1990 onwards till current Passport.*
 - iii. Signatures of first informant from account opening form and specimen signature card available with Bank of India Mahalaxmi Branch being Bank A/c No. 20035.*

iv. *Q.1 to Q. 22 disputed handwriting of first informant / Kusum Harsora in the court papers.*

v. *Signatures & handwritings of first informant admitted by her, as well as samples provided by her to Investigation Officer relied by prosecution including N1 to N7.*

It is therefore prayed that:-

a) *The Handwriting Expert be allowed to inspect and take the photographs of the above documents in order to give Expert Opinion and thereafter appear as defence witness.*

b) *The first informant and Bank of India Mahalaxmi Branch be directed to produce/grant access to the above said documents in their custody before/to the Handwriting Expert and allow him to inspect and take photographs of the same.”*

6 The said application was resisted to, by the prosecution i.e. the State. The learned Judge, after hearing the parties, vide order dated 17th February 2021, rejected the said application.

7 It is pertinent to note that the petitioner initially filed an application and sought to examine four witnesses as defence witnesses, which was rightly allowed by the learned Judge, as the petitioner wanted to examine the said witnesses as defence witnesses. However, thereafter the endeavour of the petitioner was not to examine the handwriting expert directly by putting him in the witness-box but by filing an application

seeking permission that the handwriting expert be allowed to inspect and take photographs of the four documents mentioned in the application so as to enable the expert witness to thereafter give his opinion and appear as a defence witness. By the said application, it was also prayed that the first informant and the Bank of India, Mahalaxmi Branch, be directed to produce/grant access to the documents in their custody before/to the handwriting expert and allow him to inspect and take photographs of the same, in order to give his opinion and appear as defence witness.

8 As noted above, the prosecution examined its handwriting expert as a prosecution witness No. 8. Admittedly, the petitioner's advocate declined to cross-examine the said witness. By the said application (Exhibit 593), the petitioner is seeking that its witness i.e. the handwriting expert whom they propose to examine, be permitted to re-examine all the documents once again to get the expert opinion so that thereafter the handwriting expert can depose. The said exercise is not permissible. It is always open for the petitioner to examine its witness i.e. the handwriting expert on their own, without carrying out this exercise.

9 Considering the aforesaid, there is no merit in the petition. Petition stands dismissed.

10 The learned Judge to decide the case on its own merits, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.