

16.12.2024
Court No. 03
Item No.09
(**Suvendu**)

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI*

W.P.A. 2578 of 2024

Bikash Saha

-vs-

The State of West Bengal & Ors.

Mr. Bibek Tarafder
Ms. Rishita Chakraborty

....for the petitioner

Mr. Nabankur Paul
Ms. Rina Sarkar

....for the State

Mr. Bapi Sarkar
Mr. Chayan Moni Bhowal

.....for the respondent no.4

Affidavit of service filed on behalf of the
petitioner is taken on record.

Petitioner issued cheque being no. 000036
dated 8th November, 2021 in favour of one
Dipankar Dam being respondent no.4. Since the
said cheque was dishonoured, respondent no. 4
initiated a proceeding under Section 138 of the NI
Act against the petitioner in connection with
which petitioner by filing this writ petition has
prayed for direction upon the concerned authority
for obtaining opinion of hand writing expert in
order to find out veracity of the signature. In
support of such contention, reliance is placed on

a judgment of the Hon'ble Supreme Court reported in **(2007) 2 Supreme Court Cases 258 [Kalyani Baskar (Mrs.) Vs. M.S. Sampooram(Mrs.)]**.

Learned advocate representing the respondent no. 4 submits that in connection with issuance of aforementioned cheque petitioner made a complaint and a criminal case was initiated being Mathabhanga PS Case No. 29/2022 dated 25th January, 2022 under Sections 379/420/465/468/473 of the Indian Penal Code. It is submitted that in connection with this criminal case question arose for obtaining report of hand writing expert. It is submitted that in connection with proceeding under Section 138 of the NI Act evidence was closed on 15th June, 2023 and the present writ petition has been instituted in the month of December, 2024 seeking direction upon the concerned respondent authority for obtaining opinion of handwriting expert. It is further submitted that in the proceeding under Section 138 of the NI Act no application was made for obtaining opinion of the hand writing expert to find out veracity of the signature which is present on the aforesaid cheque.

Having considered the respective submissions made on behalf of the parties, this Court finds from order dated 3rd June, 2023 passed by the Judicial Magistrate, 1st Court, Alipurduar, Jalpaiguri in CR 690/2021 that ASI of Mathabhanga Police Station prayed before the Court to send the original cheque dated 8th November, 2021 issued in favour of respondent no. 4 for verification of signature for the purpose of investigation. Therefore, it was not an issue in connection with proceeding under Section 138 of the NI Act based on the stand taken by the petitioner that report of hand writing expert needs to be called for to find out the veracity of the signature. It is also submitted on behalf of the respondent no. 4 that before closure of evidence on 15th June, 2023 no application was made in connection with the proceeding under Section 138 of the NI Act for obtaining opinion of hand writing expert and subsequently evidence was closed on 15th June, 2023 whereas present writ petition has been filed much thereafter on 3rd December, 2024.

From the aforesaid facts, it appears that petitioner by presenting this writ petition made an attempt to delay the proceeding under Section

138 of the NI Act which is pending before the court.

While considering ratio of **Kalyani Baskar (Mrs.)** (supra), this Court finds necessary direction can be given for obtaining opinion of hand writing expert unless Court thinks that the object of the party is vexatious or delaying the criminal proceedings.

In view of aforesaid scenario, no relief can be granted to the petitioner at this stage when evidence was closed on 15th June, 2023 in connection with proceeding under Section 138 of the NI Act.

Hence, writ petition stands dismissed.

There shall be, however, no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)