IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3504 of 2025

Sunil Kumar, aged about 39 years, son of Jyotindra Poddar, Resident of CIBIL LINE, Nandan Pahar, P.O. –Deoghar, P.S. –Deoghar (T), District -Deoghar. .... Petitioner

Versus

The State of Jharkhand …. Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioner : Mr. R.S. Mazumdar, Sr. Advocate
: Mrs. Jasvindar Mazumdar, Advocate
For the State : Mr. Pankaj Kumar, P.P.

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By the Court:-

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of the B.N.S.S., 2023 with the prayer to quash the order dated 17.10.2025, passed in Criminal Appeal No. 12 of 2020 by the learned Additional Sessions Judge –IX, Deoghar whereby and where under the learned Additional Sessions Judge, Deoghar has rejected the prayer of the petitioner to adduce additional evidence at the belated stage by obtaining opinion of a handwriting expert.

3. The brief facts of the case is that the petitioner is a convict of G.R. Case No. 717 of 2011 arising out of Deoghar Town P.S. Case No. 260 of 2011 for having committed the offences punishable under Section 379/34 of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for a period of three years and

also under Section 120B of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for three years and both the sentences were directed to run concurrently. Being aggrieved by the judgment of conviction dated 18.01.2020, passed by the learned Judicial Magistrate -1st Class, Deoghar, the petitioner filed Criminal Appeal No. 12 of 2020 whereas the co-convict –Dhruv Narain Parihast filed Criminal Appeal No. 9 of 2020 against his conviction; for having committed the offences punishable under Section 120B of the Indian Penal Code. The petitioner did not examine any defence witness during the trial of the case. The I.O. of the case who was examined as P.W. 25 during the trial, proved the diary of L.I.C. which was seized from the house of the petitioner, which on being proved was marked Material Exhibit –VI and two pages i.e. of date 11th January and 13th February were also marked Exhibit -13. The I.O. has deposed that at the time of the seizure, the signature of petitioner as well as of the co-accused were there on both the pages i.e. of the page of 11th January and the page of 13th February and the petitioner and the co-accused admitted their signature and the I.O. also put his signature on those pages of the said Material Exhibit –VI. The documents were marked Exhibits without objection of the defence. The only relevant question that was asked to the P.W.25 in his cross-examination in respect of these documents is that "The writing is vague on the documents and it cannot be used as promissory note." The learned appellate court considered the

settled principle of law reiterated by the Hon'ble Supreme Court of India in the case of **Bir Singh Vs. State of Uttar Pradesh**, reported in **AIR 1978 SC 59** that the discretion vested upon the appellate court under Section 391 of the Cr.P.C. should not be exercised to fill up gaps or lacunae in the prosecution evidence. The learned appellate court also considered the Judgment of the Hon'ble Supreme Court of India in the case of **Zahira Habibulla Vs. State of Gujarat**, reported in **(2004) 4 SCC 158** wherein it was observed that where in a case, it appears that the material evidence was not produced due to inadvertence and the same is necessary for just conclusion of the case, the court may exercise power under Section 391 of the Cr.P.C. The learned appellate court below also considered that though ample opportunity was there, for the appellant to raise his grievance, with respect to the signature and writing in the documents which were proved during the evidence of the prosecution witnesses, during the cross-examination of such prosecution witness and even after recording the statement under Section 313 of the Cr.P.C. twice i.e. once at the early stage and another after remand of the case, as the judgment of conviction passed earlier was set aside and the case was remanded and after remand, the judgment impugned before the appellate court was the second time judgment in the same case but appellant before it has not availed the opportunity. So, at the belated stage, making such prayer by invoking the provision of

Section 391 of the Cr.P.C. amounts to filling up of lacunae and without finding any merit, rejected the petition.

4. It is submitted by the learned senior counsel for the petitioner that the learned appellate court failed to consider that during the trial, the prosecution placed strong reliance upon the entries made in the L.I.C. Diary which has been marked Material Exhibit –VI and the relevant Exhibit being Exhibit -13. It is next submitted that the learned appellate court also failed to consider that though the I.O. has stated that the writing and signature appearing in the said L.I.C. Diary belongs to the petitioner but the I.O. is not a handwriting expert. It is next submitted that the appellate court also failed to consider that the trial court in the statement of the petitioner recorded under Section 313 of Cr.P.C. has put specific questions with respect to the alleged notation of the petitioner in the Material Exhibit –VI and Exhibit -13, in answer to which, the petitioner denied the same. It is then submitted that in their reply to the petition under Section 313 Cr.P.C., the State in the trial court has averred that examination by handwriting expert will be a strong evidence proving conspiracy between the accused persons.

5. Relying upon the Judgment of the Hon'ble Supreme Court of India in the case of **Zahira Habibulla H. Sheikh and Ors. Vs. State of Gujarat and Ors.** (Supra), it is submitted by the learned senior counsel for the petitioner that therein the Hon'ble Supreme Court of India has held that the primary object of Section 391 Cr.P.C. is the prevention of a guilty man's escape through some

careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused and the appellate court failed to take note of the settled principle of law that if the appellate court thinks that it is necessary in the interest of justice to take additional evidence, it shall do so but the learned appellate court failed to take note of this settled principle of law.

6. The learned senior counsel appearing for the petitioner next relies upon the Judgment of the Hon'ble Supreme Court of India in the case of **Brigadier Sukhjeet Singh (Retired) MVC Vs. State of Uttar Pradesh and Others**, reported in **(2019) 16 SCC 712** and submits that therein the Hon'ble Supreme Court of India has reiterated the settled principle of law that the power to take additional evidence under Section 391 Cr.P.C. has been inserted with the object to appropriately decide the appeal by the appellate court to secure the ends of justice. It is next submitted that in that case, the Hon'ble Supreme Court of India relied upon the observations made by it in the case of **Rajeswar Prasad Misra Vs. State of West Bengal**, reported in **AIR 1965 SC 1887** wherein the Hon'ble Supreme Court of India has held that additional evidence becomes necessary not because it would be impossible to pronounce the judgment but because there would be failure of justice without it but cautioned that the power must be exercised sparingly and only in suitable cases and submits that in that case, the Hon'ble Supreme Court of India deprecated the observations of the High Court that one of the ground for rejecting the petition

was that the same was filed for delaying the decision of the appeal to eternity; which was unnecessary and uncalled for in the facts of that case and submits that in this case also, the learned Additional Sessions Judge has committed a grave illegality by not keeping in mind this settled principle of law.

7. The learned senior counsel appearing for the petitioner next relies upon the Judgment of the Hon'ble Supreme Court of India in the case of **Sudevanand Vs. State though Central Bureau of Investigation with analogous cases,** reported in **(2012) 3 SCC 387** wherein it has been observed by the Hon'ble Supreme Court of India that the law casts a duty upon the court to arrive at the truth by all lawful means and submits that the appellate court has failed to consider this settled principle of law also.

8. It is lastly submitted by the learned senior counsel appearing for the petitioner that as the examination of the documents by handwriting expert is absolutely necessary to prove failure of justice, hence the learned appellate court ought to have allowed the same in exercise of its power under Section 319 of Cr.P.C. but having not done so, the learned appellate court has committed a grave illegality. Therefore, it is submitted that the impugned order is not sustainable in law and the same be quashed and set aside.

9. The learned Public Prosecutor on the other hand vehemently opposes the prayer and submits that there being absolutely no cross-examination of the P.W. 25 in respect of his statement by which he proved the Marked Object –VI as well as Exhibit -13

which was marked without objection and no question regarding the veracity of the testimony of the P.W. 25 having been asked in respect of his testimony that the handwriting belongs to the petitioner; so, the said portion of the testimony of the P.W.25 is to be accepted as truth and the opinion of a handwriting expert is a opinion only and the same is a weak piece of evidence and cannot be used as a conclusive proof of anything and the same is not substantive piece of evidence. Therefore, such evidence cannot be termed to be an evidence, non-recording of which may lead to failure of justice. Hence, it is submitted that as the learned appellate court has rightly observed that non-recording of the evidence sought to be introduced in exercise of the power under Section 391 of Cr.P.C. amounts to fill up a lacunae only, there is no illegality in the impugned order and accordingly, this criminal miscellaneous petition being without any merit be dismissed.

10. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Ajitsinh Chehuji Rathod vs. State of Gujarat & Another** reported in **(2024) 4 SCC 453** paragraph-8 of which reads as under: -

> *"8. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such*

> *prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice." (Emphasis supplied)*

Wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that the power to record additional evidence under Section 391 of the Code of Criminal Procedure should only be exercised when the party making such request was

i) prevented from presenting the evidence to the trial despite due diligence being exercised; or

ii) that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal; and

iii) that non-recording of such evidence may lead to failure of justice.

11. The Hon'ble Supreme Court of India in the case of **Shamnsaheb M. Multtani vs. State of Karnataka** reported in **(2001) 2 SCC 577** paragraph-23 of which reads as under:-

> *"23. We often hear about "failure of justice" and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment [(1977) 1 All ER 813 : 1978 AC 359 : (1977) 2 WLR 450 (HL)]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage." (Emphasis supplied)*

Has reiterated the settled principle of law that particularly the superior criminal court should make a close examination to

ascertain whether there was really a failure of justice or whether it is only a camouflage.

12. The Hon'ble Supreme Court of India in the case of **Magan Bihari Lal Vs. State of Punjab**, reported in **(1977) 2 SCC 210**, has reiterated the settled principle of law that the expert opinion must always be received with great caution and perhaps none so with more caution than opinion of a handwriting expert. There is profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert's opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law.

13. In the case of **Ram Chandra and Another Vs. State of Uttar Pradesh**, reported in **AIR 1957 SC 381**, the Hon'ble Supreme Court of India has held that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction but it may be relied upon when supported by other items of internal and external evidence.

14. In the case of **Ishwari Prasad Misra Vs. Mohammad Isa**, reported in **AIR 1963 SC 1728**, the Hon'ble Supreme Court of India has observed that expert evidence of handwriting can never be conclusive because it is after all opinion evidence and this view was reiterated by the Hon'ble Supreme Court of India in the case of **Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee (Since deceased and after him his LRs and Others)**, reported in **AIR 1964 SC 529** where it was pointed out by the

Hon'ble Supreme Court of India that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence.

15. The Hon'ble Supreme Court of India again in the case of **Fakhruddin Vs. The State of Madhya Pradesh**, reported in **AIR 1967 SC 1326** had the occasion to consider the evidentiary value of expert opinion in regard to handwriting and gave note of caution pointing out that it would be risky to base a conviction solely on the evidence of handwriting expert before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.

16. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Laxmibai (Dead) Through LRs. & Another vs. Bhagwantbuva (Dead) Through LRs. & Others** reported in **AIR 2013 SC 1204**, para-31 of which as under:-

> *"31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands*

> *enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses. (See: Khem Chand v. State of Himachal Pradesh, AIR 1994 SC 226 : (1993 AIR SCW 3675); State of U.P. v. Nahar Singh (dead) & Ors., AIR 1998 SC 1328 : (1998 AIR SCW 1200); Rajinder Pershad (Dead) by L.Rs. v. Darshana Devi (Smt.), AIR 2001 SC 3207 : (2001 AIR SCW 3042); and Sunil Kumar & Anr. v. State of Rajasthan, AIR 2005 SC 1096) : (2005 AIR SCW 589)."(Emphasis given by me)*

That if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue and without this, it is not possible to impeach his credibility.

17. It is pertinent to mention here that there are instances galore where the Hon'ble Supreme Court of India has held that in the absence of cross-examination of a witness, the evidence of such witness remains un-challenged and ought to be believed. In the case of **State of U.P v. Nahar Singh (Dead) and Others** reported in **AIR 1998 SC 1328,** the Hon'ble Supreme Court of India in paragraph no. 13 and 14 held as under:-

> *"13. It may be noted here that that part of the statement of PW-1 was not cross-examined by the accused. In the absence of cross examination on the explanation of*

delay, the evidence of PW-1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

14. The oft quoted observation of Lord Herschell, L.C. in Browne v. Dunn, (1893) 6 The Reports 67, clearly elucidates the principle underlying those provisions. It reads thus:

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing."(Emphasis given by me)

Similarly in the case of **Sunil Kumar & Another v. State of Rajasthan** reported in **AIR 2005 SC 1096,** the Hon'ble Supreme

Court of India observed in paragraph No.13 of the judgment as under:-

> *"13. … Additionally, no question was asked to the investigating officer as to the reason for the delayed dispatch of the FIR. Had this been done, investigating officer could have explained the circumstances. That having not been done, no adverse inference can be drawn." (Emphasis given by me)"*

18. Now coming to the facts of the case, the undisputed fact remains that there is absolutely no cross-examination of the P.W.25 regarding his testimony, by which; he proved the Material Exhibit –VI and the document which has been marked Exhibit -13. There is no question put to the P.W.25 regarding whether the handwriting in the document proved by him does not belong to the petitioner.

19. It is needless to mention here that this is not the case of the petitioner that the petitioner was prevented from presenting the evidence to the trial court despite due diligence being exercised nor it is the case that the fact giving rise to the prayer came to light at a later stage during the pendency of the appeal. So the only ground is that the evidence could have been accepted by the appellate court as non-recording of such evidence may lead to failure of justice but as already indicated above, the opinion of a handwriting expert is not a substantive evidence, a conviction cannot be based solely upon the same. The other evidence whatever is there is already in the record. Since, the appeal is still pending before the appellate court, this Court restrains itself from

expressing any opinion regarding the other evidence available as this is also not necessary so far as this present criminal miscellaneous petition is concerned.

20. Under such circumstances, this Court is of the considered view that the learned appellate court has not committed any illegality in rejecting the prayer of the petitioner to reopen the case by sending a particular document, the veracity of which was never challenged and the same has been marked without objection to send the document to the handwriting expert and obtain his opinion, as certainly the same would not result in failure of justice. Therefore, this Court is not inclined to interfere with the order dated 17.10.2025, passed in Criminal Appeal No. 12 of 2020 by the learned Additional Sessions Judge –IX, Deoghar in exercise of its power under Section 528 of the B.N.S.S., 2023.

21. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 9th December, 2025
AFR/Sonu-Gunjan/-

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