



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 WRIT PETITION NO. 8801 OF 2024

VIJAYKUMAR GULABCHAND BALDAVA
VERSUS
GAUTAM PRAKASH KULKARNI

Mr. N. S. Jaju, Advocate for the petitioner
Mr. A. A. Joshi, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 27th FEBRUARY, 2025

PER COURT :-

1. This petition takes exception to the order passed below Exhibit 219 in Spl. Civil Suit No. 117/2006, whereby application moved by the petitioner/original defendant for sending the disputed document to Central Forensic Science Laboratory, Kharadi, Pune came to be rejected.

2. The facts as they appear from the record indicate that an application was filed by the defendant for sending the disputed document to forensic laboratory for seeking expert opinion as to the age of ink used for writing certain terms therein. Since the Trial Court dismissed the application, Writ Petition No. 10793/2015 was filed. This Court by order dated 28/11/2018 partly allowed the petition with following direction :

"18. The impugned order dated 09.10.2015 is quashed and set aside. Application Exh. 190 shall stand allowed.

19. Considering the above, the Trial Court shall pass an order on Exh. 190 referring the concerned document Exh. 189 to the Nutron Activation Analysis, BABC, Mumbai, with a direction to decide the age of the ink appearing in the writing on the document as well as all signatures of this defendant and witnesses below the said document.

20. The requisite fees shall be deposited by the petitioner with the said Agency. The Trial Court would issue a direction to the said Agency to submit its report along with the original document referred, in a sealed envelope and preferably within a period of 45 days from the date of the receipt of the said document along with the order of the Trial Court.

21. After the report is received by the Trial Court, it shall proceed to decide Special Civil Suit No. 117 of 2006 as expeditiously as possibly and, preferably on or before 30th day of September, 2019."

3. Pursuant to the said direction the documents were sent to Nutron Activation Analysis, BABC, Mumbai. The said documents however were returned from postal authorities with remarks that addressed is not available. Though subsequently the documents were received by Nutron Activation Analysis, BABC, Mumbai, it was informed by the said laboratory that facility of examination of age of ink is not available. In the meantime in a proceeding under Section 138 of the Negotiable Instruments Act (for short 'NI Act') similar request came to made in respect of the cheque in question. As the said application was also rejected by the Criminal Court, Criminal Application No. 1008/2020 came to be filed before this Court. This Court by passing order dated

19/06/2021 has directed the said cheque to be sent Central Forensic Science Laboratory, Kharadi, Pune.

4. This Court is informed that as per the direction of this Court, the said cheque was sent to the Laboratory and report is also received in the said proceeding.

5. In this backdrop application came to be moved before the Trial Court for sending the document in Spl. C.S. No. 117/2006 to Central Forensic Science Laboratory, Kharadi, Pune. This application is rejected on the ground that similar application below Exhibit 216 came to be rejected by the said Court on 30/09/2022.

6. Learned counsel for the petitioner submits that in view of the order passed by this Court dated 28/11/2018, it is absolutely necessary that the document in question needs to be sent to the Forensic Laboratory for the purpose of determination of the age of the ink of the said document. It is his submission that at the first instance the document sent to the said laboratory was returned with the endorsement addressed not known, however, later on the documents were resent to the laboratory. However, in response thereto it was informed by the said laboratory that there is no facility available with the said lab for ascertaining the age of the ink. According to him, in this backdrop,

application was moved for sending the document in question to the laboratory at Pune. It is his submission that in the meantime the Trial Court *suo moto* had directed the document to be sent to another lab. He has a grievance that if the document is to be sent for analysis to the said lab as ordered by the Trial Court, the petitioner will have to bear expenses of Rs.84,000/- + GST. As against this the Central Forensic Science Laboratory, Kharadi, Pune charges Rs.5,000/- for the same purpose. He therefore seeks appropriate direction to Trial Court, by setting aside impugned order.

7. Learned counsel for the respondent opposed the petitioner essentially on the ground that the suit is filing for since 2006 and that dilatory tactics are being adopted by the petitioner to ensure that suit is not decided. This contention is refuted by the learned counsel for the petitioner .

8. Once this Court has held in Writ Petition No. 10793/2015 that the document in question needs analysis to ascertain the age of the ink of the disputed document, it becomes absolutely necessary that the document is sent to the expert. Herein this case in the dispute between the same parties under the provisions of 138 of NI Act, the cheque in question was referred to Central Forensic Science Laboratory, Kharadi, Pune and the report is already received in the said case. This Court,

therefore, finds no reason or justification in rejecting the application filed by the petitioner seeking document in this case to be sent to the same laboratory.

9. The impugned order therefore cannot sustain. As a result of this, petition stands allowed. Exhibit 219 stands allowed. The document in question be sent to Central Forensic Science Laboratory, Kharadi, Pune. Trial Court to direct the said laboratory expedite the analysis and submit a report within specific time.

(R. M. JOSHI, J.)

ssp