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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 9406/2023, CRL.M.A. 35183/2023**

ALAM KHAN

.....Petitioner

Through: Mr. Vikas Wahi and Mr. Syed Shoeb,
Advocates.

versus

ABDUL GAFFAR

.....Respondent

Through: Mr. Mukesh Birla, Advocate.

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

ORDER

% **29.07.2025**

1. Petitioner herein seeks setting aside of the order dated 17.11.2023 passed by the Learned ASJ, Saket Court, whereby an application under Section 391 Cr.P.C. filed during pendency of the appeal for additional evidence for examining the handwriting expert *qua* the disputed signatures on the cheque, was dismissed.
2. Appeal pending adjudication filed by the petitioner against the Judgment of Conviction dated 31.03.2023 and order of sentence dated 10.04.2023.
3. Learned counsel for the petitioner would strenuously argue that the Sessions Court completely misdirected itself in not appreciating the application filed by the petitioner seeking additional evidence.
- 3.1 He would submit that there is no dispute *qua* the relevancy of the additional evidence as has also been noted by the Trial Court *vide* an order



dated 04.03.2023 (Annexure P-11) whereby an earlier application of the petitioner which was filed during the pendency of the trial for examining of the hand writing expert was allowed. However, the petitioner through his statement dated 28.03.2023 expressed that he does not wish to get the signature examined, which was erroneously held against him by the Appellate Court.

4. Per contra, the learned counsel for the responded contends that availing the same application after the conviction at the learned Trial Court and that too, 6 months after the filing the appeal amounts to delaying tactics on the part of the petitioner.

4.1 Learned counsel for the respondent would also submit that bank officials were summoned as witnesses to prove the signatures and they have duly deposed before the learned Trial Court that there is no mismatch of signatures and their testimony has remained unimpeached before the learned Trial Court.

5. On a query by Court *qua* the delay, the learned counsel for petitioner submits that the application before the Appellate Court is not belated. He submits that the delay was because the petitioner, being in poor financial circumstances, could not arrange 20% of the compensation amount awarded by the learned Trial Court, which is a prerequisite for getting his appeal listed for hearing. As soon as he was able to arrange the amount, he filed the application.

6. In the aforesaid backdrop, I have heard the learned counsel for the Petitioners and the Respondent as well as perused the material available on record.

7. I am unable to persuade myself with the arguments of the learned



counsel for the petitioner. Let us see how.

8. First and foremost, the impugned order passed by the learned Appellate Court, whereby application under Section 391 Cr.P.C. be seen which is reproduced herein below:-

“Today it has been submitted by the Ld. Counsel for the appellant that the main counsel for the appellant was not present at the time of recording of said statement of appellant on 28.03.2023 and out of some mis-communication, the appellant made the said statement before the Ld. Trial Court. However, this submission seems frivolous as a bare perusal of the Trial Court records reflects that the said statement made by the appellant on 28.03.2023 was recorded in the presence of the Ld. Counsel for appellant. In fact, final arguments were also advanced on 28.03.2023 itself. The said fact reflects that the appellant was duly represented by his Counsel on 28.03.2023. Admittedly, the appellant has not made any complaint in the Bar against his counsel for incorrectly advising him to make the statement dated 28.03.2023 or for advancing final arguments either.

That apart, the appeal file reflects that the present appeal was registered on 16.05.2023. Till now, more than 06 months have elapsed since the filing of present appeal. The appellant is at a loss of words to explain as to what prevented him from moving the present application during the said period. It seems that the appellant is trying to gain time in this Court by moving the present application on nonexistent grounds. Such an attempt has to be nipped in the bud. As such, without going into the merits of this case, the present application stands dismissed.

At this stage, Ld. Counsel for the appellant seeks an adjournment to address final arguments. Matter stands adjourned for 21.12.2023 for final arguments. It is clarified to the parties that this shall be last opportunity to address final arguments.”

I am in agreement with the reasoning assigned in the order, *ibid*.

9. Furthermore, the learned counsel for the petitioner’s contention that



the handwriting expert is required to be examined as there is a mismatch of signatures, is of no significance in light of the signatures having been duly examined and proved on the cheque by the banker of the petitioner who has already been examined. Be that as it may, I do not wish to venture into the controversy *qua* the signatures. Reason is, once the earlier application filed before the learned Trial Court was allowed, it was open to the petitioner to have availed the opportunity for examining the handwriting expert. As it turns out, subsequently the petitioner on his own volition, in presence of his counsel made a statement before the learned Trial Court that he did not wish to examine the handwriting expert. Matter rested until the entire trial was concluded and the petitioner was convicted.

10. It is only after his conviction and filing of the appeal that he has preferred the present application that too not accompanied with the appeal, but as an afterthought after a lapse of six months of filing the appeal on the ostensible ground that since she could not muster 20% of the compensation, therefore, he chose not to file the application along with the appeal.

11. There appears to be a deliberate strategy to indulge in dilatory tactics to delay the proceedings, rather than being a genuine reason for not preferring the application under Section 391 Cr.P.C. on earlier occasion.

12. In the parting, I may also note that no doubt, while allowing the application to summon the handwriting expert, learned Trial Court observed that testimony of the handwriting expert seems to be relevant given that it was of the view that for just decision in the matter, examination of signature on the cheque is essential. The said expression and the opinion were only for the purposes of allowing the application and not for the purposes of giving a finding in the trial. Thus, the emphasis on the observation of the learned



Trial Court is misplaced.

13. As an upshot, no ground to interfere with the impugned order. The petition is dismissed.

ARUN MONGA, J

JULY 29, 2025/akc