

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.2190/2015

Bhupendra

Vs.

Pawan Kumar

Shri K.P. Pandey, learned counsel for the applicant.

Shri Praveen Mittal, learned counsel for the respondent.

ORDER

(Passed on 17/07/2015)

This application is filed under section 482 Cr.P.C. and is directed against the order passed by the learned Additional Sessions Judge, Neemuch in Criminal Revision No.27/2013 and the order passed by the learned Judicial Magistrate First Class, Neemuch in Criminal Case No.533/2011 dated 28.01.2014.

2. The facts forming background of this case shows the unfortunate in manner in which our courts below work and due to such attitude the parties suffer loss of time and money.

3. The present applicant is facing trial before the learned

Magistrate in the criminal trial mentioned above under section 138 Negotiable Instruments Act. At defence stage, the present applicant filed an application under section 45 of Evidence Act stating therein that according to the averments in the complaint the transaction took place in 2009 and thereafter, about 2 ½ years after the transaction took place the said cheque was alleged to have been given by the present applicant to the complainant. According to the present applicant, he gave a blank cheque as a security against the transaction which took on the basis of a promissory note. The remaining writing of the cheque except signature is post-dated not written by him and to prove this fact, he wanted to examine handwriting expert. The learned Magistrate allowed that the handwriting expert to be examined, however, he did not order that the cheque was first examined and photographed by the handwriting expert and he should prepare a report thereon and after which he should be examined before the court and put to cross-examine by the complainant. Under these circumstances, the evidence of the handwriting expert could not be recorded. This fact was brought in the knowledge of the learned Magistrate by the present applicant and by order dated 28.01.2014 and subsequently by order dated 10.02.2014, the Magistrate not only disallowed his prayer for getting the cheque examined by the handwriting expert and thereafter recording of his statement, the learned Magistrate

proceeded to close the defence evidence and fixed the case for final argument.

4. Aggrieved by this order, revision was filed and unfortunately the revisional court also did not accept this contention of the present applicant that the cheque should first be examined by the handwriting expert and then only his evidence should be recorded. Aggrieved by both the orders below and finding himself in such unfortunate situation this application is filed.

5. Going through the impugned orders, it is apparent that no opportunity was given to the present applicant for getting the questionable cheque examined by the handwriting expert of his choice. The same should have been done by the Magistrate and the revisional court and without examination of the cheque by the handwriting expert his statement is of no value and in this view of the matter this application deserves to be allowed and accordingly allowed.

6. The orders passed by both the courts below are set aside. It is directed that the questionable cheque should be first made available in the Court itself to the handwriting expert who should examine the cheque and may also be allowed to take photograph of the cheque if necessary, he should also be given sample of

handwriting of concerning persons and then he should prepare a report of his examination and submitted to the Court and after such report, his statement should be recorded by the Court.

7. With this observation and direction, this application stands disposed of.

(ALOK VERMA)
JUDGE