

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

MCRC No.3864/2015

Satyanarayan S/o Kanhaiyalalji Dixit

Vs.

State of MP

Shri Vinay Gandhi, learned counsel for the applicant.
Shri Amit Singh Sisodiya, learned counsel for the respondent/State.

ORDER

(Passed on this 1st day of July, 2015)

This application under section 482 of Cr.P.C. is directed against the order dated 13.02.2015 passed by learned 5th Additional Sessions Judge, Mandsaur in Cr.R. No.32/2015 dated 13.02.2015 by which he confirmed the order passed by learned Judicial Magistrate First Class in Criminal Case No.2905/2009 dated 09.01.2015 whereby, learned Magistrate dismissed an application filed by by present applicant under section 45 and 73 of the Evidence Act.

The brief facts of the case are that present applicant is facing trial under section 420 of IPC in Crime No.642/2004 registered at Police Station – City M.S.R. District – Mandsaur. As per the allegation of the prosecution story, present applicant allegedly

issued a cheque on 10.09.2004 while, his account was closed on 05.07.2004. According to the present applicant, he issued this cheque on 10.09.2002. The complainant made overwriting in the date of the cheque and made it to appear that cheque was issued on 10.09.2004 and, therefore, if it is proved that the cheque was issued on 10.09.2002, no case is made out against him. To prove that there is overwriting, he wants to examine the Hand Writing Expert but the courts below dismissed his application and, therefore, this application is filed. After going through the impugned orders, it is apparent that the prosecution in this case, examined one Hand Writing Expert as PW-5. However, the Hand Writing Expert admitted that he only submitted his opinion in respect of the signature on the cheque and did not examine the cuttings on the date of the cheque. Learned Additional Sessions Judge observed in para 8 of the impugned judgment that in this case, there is no charge in respect of the date on the cheque but the charge is that the accused issued the cheque after closing his account. However, the observation made by learned Additional Sessions Judge appears entirely erroneous as, it is apparent from the record that account was closed in July, 2004 and if the present applicant proves that the cheque was issued on 10.09.2002 then, this would go to the very root of the matter.

In this view of the matter in the considered opinion of this

Court, both the courts below erred in not allowing the application filed by the present applicant. Therefore, this application is allowed. It is directed that the applicant may be allowed to get the questionable cheque examined by the Hand Writing Expert and then the statement of the same Hand Writing Expert may be recorded by the Court.

With this direction, the application stands disposed of.

C.c as per rules.

(Alok Verma)
Judge

Kratika/-