

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

**MISC.CRIMINAL CASE No.14124 of 2016**

**Between:-**

**KUMAN S/O SHRI DWRKADAS SHAH, AGED  
ABOUT 45 YEARS R/O PRATAPPURA,  
BURHANPUR, POLICE STATION SHIKARPURA  
DISTRICT BURHANPUR (M.P.).**

**.....PETITIONER**

***(BY SHRI J.A.SHAH - ADVOCATE)***

**AND**

- 1. STATE OF MADHYA PRADESH THROUGH  
COLLECTOR, BURHANPUR (M.P.).**
- 2. KAMAL S/O SHRI RASIKLAL BHARTIYA,  
AGED ABOUT 45 YEARS R/O MIG 31, NEW  
INDIRA COLONY BURHANPUR (M.P.).**

**.....RESPONDENTS**

***(BY SHRI S.K.GUPTA -PANEL LAWYER FOR  
RESPONDENT NO.1 AND SHRI MANISH DATT - SENIOR  
ADVOCATE WITH SHRI MAYANK SHARMA - ADVOCATE  
FOR RESPONDENT NO.2)***

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RESERVED ON : 06.09.2023

PRONOUNCED ON : 27.09.2023

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*This misc.criminal case coming on for admission this day, **Hon'ble  
Shri Justice Dinesh Kumar Paliwal**, passed the following:*

**ORDER**

Petitioner has filed this petition under Section 482 of Cr.P.C., 1973 (hereinafter referred to as “the Code”) against the order dated 13.07.2016 passed in S.T.No. 24/2013 (Kuman Vs. Kamal and ano.) whereby the learned Ist Addl. Sessions Judge, Burhanpur has allowed application of the accused/respondent No.2 dated 16.07.2015 and has ordered that examination-in-chief of handwriting expert Ulhas Athle dated 16.07.2015 and document Ex.P/30 and P/31 and C.D. Article A-1 being inadmissible in evidence, cannot be read in evidence.

2. Learned counsel for the petitioner has submitted that petitioner/complainant filed a complaint before C.J.M. Burhanpur for commission of offence punishable under Sections 420/34, 465,467,468 and 471 of IPC and section 138 of Negotiable Instrument Act alleging that accused/respondent No.2 Kamal had borrowed Rs.5,00,000/- (five lacs) from the petitioner/complainant on 05.06.2010 and had issued two cheques of different dates in his favour. It is alleged that when complainant presented those cheques in his bank for encashment, same were returned to him with an endorsement “*No sufficient amount and signature is different*”. It was further alleged that both the cheques issued by accused Kamal were of his wife’s bank account but accused Kamal by putting his signature on the cheques had issued in favour of the petitioner/complainant. When the cheque stood bounced on the ground of “*No sufficient amount and signature is different*”, the petitioner/complainant filed a complaint on 07.06.2011 before C.J.M. Burhanpur. The learned C.J.M. recorded the statement of witnesses produced by the complainant under section 200 and 202 of Cr.P.C. He also produced hand writing expert’s report alongwith opinion that the cheques bears the signature of Kamal Bhartiya and not of Nirupama Bhartiya. The learned C.J.M. considering the statements on oath of the

complainant and witnesses found that offences under sections 420/34, 465,467,468 and 471 of IPC are *prima facie* made out. He took the cognizance and ordered to summon the accused. As the case was result of the enquiry under section 202 Cr.P.C and were triable by the Court of Session, he committed it to the court of Sessions.

3. The learned Addl. Sessions Judge framed the charges against the accused/respondent No.2. He pleaded not guilty and claimed to be tried.

4. Evidence of prosecution witnesses was recorded. Alongwith complaint, complainant had filed, Shri Ulhas Athale, handwriting expert report dated 02.07.2012 showing that the cheques issued were signed by accused/ respondent No.2 and his signatures was identical as mentioned in the reply of the statutory notice. After recording of examination-in-chief of the prosecution witnesses Ulhas Athale, handwriting expert. Respondent No.2/accused filed an application before learned Addl. Sessions Judge praying for rejection of the examination-in-chief of handwriting expert Ulhas Athale and report document Ex.P/30 and P/31 and C.D. Article A-1. The learned trial court by the impugned order allowed application of the accused on the ground that handwriting expert Mr. Ulhas Athale's statement under section 202 Cr.P.C was not recorded before the Magistrate. Therefore, before Session Court, he cannot appear as prosecution witness and his evidence is inadmissible. Consequently, it was directed that the evidence of handwriting expert Ulhas Athale and report document Ex.P/30 and P/31 and C.D. Article A-1 being inadmissible cannot be taken into consideration. Being aggrieved by the aforesaid order, the complainant Kuman Shah has approached this court for setting aside the impugned order.

5. Learned counsel for the applicant has submitted that learned Addl. Sessions Judge has committed error in allowing the application filed by

respondent No.2 and holding that handwriting expert's evidence is inadmissible. It is submitted that learned Addl. Sessions Judge has not taken into consideration the fact that handwriting expert's report alongwith his opinion was submitted before the learned C.J.M. under section 202 of Cr.P.C at the time of inquiry. Therefore, the impugned order that evidence of handwriting expert and his report Ex.P/30 and P/31 and C.D Article-1 are inadmissible being erroneous and against the settled proposition of law, is not worth uphold. Thus, he has prayed that impugned order passed by learned Addl. Sessions Judge be set aside.

6. On the other hand, learned counsel for respondent No.2/accused placing reliance on *Waseem Siddiqui Vs. State of M.P. (2006) MPLJ -24* has submitted that where complainant has not examined any witness under section 200 or 202 of Cr.P.C before the Magistrate then such witness cannot be permitted to be examined during the course of trial in the Sessions Court as the accused cannot be deprived of the earlier statement of the witness and he cannot be taken by surprise. On the aforesaid pretext, he has supported the impugned order and has prayed for dismissal of the petition.

7. I have heard the learned counsel for the parties and perused the record.

8. In the case in hand, it is undisputed that accused is facing sessions trial in S.T.No.24/2013 for commission of offence under sections 420/34, 465,467,468 and 471 of IPC. It is also undisputed that examination-in-chief of Mr. Ulhas Athale, handwriting expert was recorded on 16.07.2015 and the documents Ex.P/30, P/31 which are handwriting expert's report, his opinion and the C.D. Article A-1 were exhibited before the trial court but later-on, on the basis of an application filed by

the accused/respondent No.2. His evidence has been declared to be inadmissible by the impugned order.

9. Chapter 18, Section 225 to 237 of Cr.P.C prescribes procedure of trial before the court of Sessions. Section 230 of Cr.P.C makes it clear that *if an accused refuses to plead or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.* **Section 231 of Cr.P.C** prescribes Evidence for prosecution. Section 231(1) provides that *on the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.*

10. A bare reading of aforesaid provision under Section 231 of Cr.P.C makes it clear that this section in no way restricts the prosecution with regard to the witnesses to be called. Even if a witness was not named by the prosecution in the opening address. if the fact disclosed in the evidence or the question put in the cross examination necessitate bringing on record the evidence of a witness, the court should not hesitate in summoning him as a prosecution witness or even as court witness because as per mandate of section 231 of Cr.P.C all witnesses are examined at the trial. It is not correct to say that under section 231 Cr.P.C only those witnesses can be examined in a trial “ in a complaint cases exclusively triable by the court of sessions who have been produced in the inquiry under section 200 and 202 of Cr.P.C”. The trial court has to examine all the witnesses mentioned in the list given under section 204 of Cr.P.C, subject to the condition that the evidence of the witnesses should be relevant to the facts of the case.

11. In the case of *Rama Choudhary Vs. State of Bihar-(2009) 6 SCC 346*, the Hon'ble Apex Court held that *"It is also clear from Section 231 of the Cr.P.C. that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet."*

12. As far as the case on hand is concerned, the report of handwriting expert before the C.J.M. finds place in its order taking cognizance dated 02.07.2012. In para-4 of the order taking cognizance, it is clearly mentioned that "in support of the complaint, the complainant has examined himself alongwith Bank Manager Mukesh Yadav (P.W.2), Anil Kumar (P.W.3) Deputy Manager of PNB and R.S.Khandelwal (P.W.4). He has also produced handwriting expert's opinion in which it is opined that disputed cheques bears the signature of Kamal Bhartiya and not that of Nirupama". Thus, it is apparent that the handwriting expert's report was produced before the Magistrate and at the time of taking cognizance he has taken note-of the same.

13. In this case, it is apparent that handwriting expert's report Ex.P/30, P/31 and C.D. Article A-1 were produced before the learned C.J.M. before taking cognizance and he has considered the same. The handwriting expert's report of Mr. Ulhas Athale, prosecution witness, was on record right from the beginning before the learned Magistrate and according to his opinion the cheques given by the accused bears his signature and not that of account holder Ms. Nirupama.

14. Learned counsel for respondent No.2/ accused contended that the learned Addl. Sessions Judge has not committed any error by passing the impugned order dated 13.07.2016 whereby he has directed to discard the handwriting expert's evidence and C.D Article A-1 for the reason that his statement under section 200 and 202 Cr.P.C was not recorded before the

Magistrate and, therefore, respondent No.2 was deprived of an opportunity to test his deposition with his earlier statement (which was not on record). The argument is not worth acceptance as it is a matter of record that report of handwriting expert was on record before taking the cognizance for commission of offence against respondent No.2/accused by learned C.J.M. It is also worth mentioning that the prosecution side in its trial programme before the court of session has named him as a witness and has also the handwriting expert's report is a part of the complaint received on committal in the court of Sessions.

15. Under Section 202 of the Cr.P.C statement of any person supposed to be acquainted with the facts and circumstances of the case is required to be recorded in writing but under section 231 of Cr.P.C, the court in the course of trial of the Sessions case is "*to take all such evidence as may be produced in support of the prosecution case*". These words of section 231 of Cr.P.C do not confine production of witnesses by the prosecution side only upto those persons whose statements have been recorded under section 200 or 202 of Cr.P.C. On the other hand, the words "*all such evidence*" clearly signifies that the right of the prosecution extends to production of such persons as its witnesses during the course of the trial which have not been named in the complaint/ charge sheet or whose statements have not been recorded under section 200 or 202 of Cr.P.C.

16. In this case, as already mentioned, that handwriting expert's report is available on the record right from the beginning and same was considered by the learned C.J.M. before taking cognizance of the offence triable by the court of Sessions. In fact, the learned C.J.M. has considered the handwriting expert's report at the very initial stage at the time of taking cognizance and same was part of the record at the time of committal and even as per trial programme, the evidence of handwriting

expert in the trial for examining him as a witness was also there. The examination-in-chief of Mr. Ulhas Athale was recorded before the Court of Sessions. He has exhibited the documents and C.D Article A-1 in present of respondent No.2/accused and at that time, no objection in writing was made. It was on a day subsequent to examination-in-chief of the prosecution side that application was made that Mr. Ulhas Athale cannot be produced as prosecution witness. As the report was already on record and the copy thereof alongwith other documents was supplied to respondent No.2/accused under section 207/208 of Cr.P.C before committing the case to the court of Sessions under section 209 of Cr.P.C. In such circumstances, the contention of learned counsel for respondent No.2/accused that he was taken by surprise so far as evidence of Mr. Ulhas Athale the handwriting expert prosecution witness is concerned is devoid of force.

17. As far the facts of *Waseem Siddiqui (supra)* case are concerned, same have no application in the facts of present case as in that case revision was filed against order of framing of charge and in that case an objection was raised before the Sessions court that committal court failed to record the evidence of all the witnesses as provided under the proviso of sub section (2) of section 202 of Cr.P.C, therefore, the sessions trial cannot be continued. But learned Addl. Sessions Judge finding that police has filed a private complaint and, therefore, there was no need to record the statement of all the witnesses had dismissed the objections and the co-ordinate bench considering the case of *Rampyare Vs. Rampyari -2004(4) MPLJ-54* was of the view that “*where a complainant does not examine a particular set of witnesses under section 200 and 202 of the Cr.P.C then those witnesses cannot be examined during the course of trial in the Sessions Court.*” But in the case on hand the facts are different. In this



case handwriting expert's report was already on record before Magistrate and same was considered by the learned C.J.M at the time of taking cognizance. It is noteworthy that at the time of committal of the case, copy of the same was supplied to the accused and in the list of prosecution witnesses handwriting expert was shown as a witness. In the case of *Waseem Siddiqui (supra)*, provisions of Section 231 of Cr.P.C were not taken into consideration. Therefore, the learned trial court was not justified in discarding the handwriting expert's report and evidence of the prosecution witness Mr. Ulhas Athale, handwriting expert.. Thus, the facts of *Waseem Siddiqui (supra) case* has no application in the facts of the present case.

18. In evidence, examination-in-chief of handwriting expert Mr. Ulhas Athale has been recorded in accordance with law. The accused will have full opportunity to cross-examine the aforesaid witness and the trial court shall offer full opportunity to accused to cross-examine the prosecution witness Mr. Ulhas Athale, the handwriting expert. The sheer fact that on account of non-availability of any statement of Mr. Ulhas Athale under section 202 of Cr.P.C respondent No.2 did not have an opportunity of confronting of an earlier statement of witness to him during the course of cross-examination will not discredit the testimony of prosecution witness Mr. Ulhas Athale as the same is subject to right to cross-examination by the accused. Thus, the learned trial court was not justified in coming to the conclusion that his testimony is inadmissible in evidence.

19. Adverting to the facts of the case on hand, it is apparent that in this case as per the allegations, respondent No.2/accused had issued two cheques from his wife's account by putting his own signatures and when the same were presented in the Bank, they stood dishonoured on the ground of "*No sufficient amount and signature is different*". In such

circumstances the evidence of handwriting expert which is already on record since before taking cognizance of the offence by the learned Magistrate is relevant and necessary in deciding of the matter. It is the duty of the prosecution to lay before the court all material evidence available to it which is necessary for unfolding its case. It is elementary that where prosecution has a positive case, it must prove whole of the case.

20. In a case where signatures of cheques are disputed, it is always the duty of the prosecution to prove the same by adducing expert evidence. Since it is the duty of the prosecution to bring out evidence which may assist it to arrive at the true decision it is required to produce all such evidence. The purpose of expert's opinion is primarily to assist the court in arriving at the final conclusion. Courts' are expected to analyze the report and read it in conjunction with such evidence on record and then form its final opinion as to whether such report is worthy of relevance or not. As the handwriting expert's report is only opinion evidence and accused will have opportunity to cross-examine the handwriting expert, in such circumstances, it was not justified on the part of the learned Addl. Sessions Judge to order to direct the evidence of the prosecution witness Mr. Ulhas Athale, the handwriting expert which was already on record before taking of the cognizance of the offence by the Magistrate for commission of the offence which the accused are facing before the court of Sessions. An accused has all rights to cross-examine the handwriting expert and to produce his evidence in rebuttal. Thus, I am of the considered view that Section 231 of Cr.P.C in no way restricts the power of prosecution with regard to the witnesses to be called.

21. Therefore, for the reasons stated hereinabove an foregoing discussion, it is not correct to say that under section 231 of Cr.P.C only

those witnesses can be examined at the trial (in a complaint case) exclusively triable by the court of Sessions who had been produced in an inquiry under section 202 of Cr.P.C. The Session court has to examine all the witnesses mentioned in the list given by the prosecution subject to the condition that evidence of the witnesses is relevant with the facts of the case.

22. Consequently, this petition filed under section 482 of Cr.P.C. is allowed. The impugned order dated 13.07.2016 passed by the learned Addl. Sessions Judge, Burhanpur in S.T.No.24/2013 being erroneous and incorrect, is hereby set aside. The learned trial court is directed to allow examination-in-chief of Mr. Ulhas Athale, handwriting expert on record alongwith Ex.P/30, P/31 documents and Article A-1 C.D. The respondent No.2/accused shall have full right to cross-examine the witnesses and to file the rebuttal evidence against it.

23. Accordingly, petition is **allowed** with the aforesaid directions.

**(DINESH KUMAR PALIWAL)**  
**JUDGE**