



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 542/2023

Dnyaneshwar Eknath Gulhane,
age 58 years, Occ. Agriculture,
r/o Bhagyodhya Society, Near
Ram Nagar, Arni Road, Tq. And
Dist. Yavatmal.

.....**PETITIONER**

..V E R S U S..

Vinod Ramchandra Lokhande
Aged 57 years, Occ. Business,
r/o Gedam Nagar, Zilla Parishad
Colony, Tq. And Dist. Yavatmal.

...**RESPONDENT**

Mr. N. R. Shiralkar, Advocate for petitioner.
Mr. S. G. Joshi, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.

DATED :- 02.11.2023

JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

2. The petitioner-original complainant is aggrieved by
order dated 21.06.2023 passed by the learned Sessions Court in
Criminal Revision Application No.3/2023, whereby the order
dated 13.12.2022 passed by learned Judicial Magistrate First
Class, Yavatmal below Exh.-49 in Summary Criminal Case
No.2400/2016, has been quashed and set aside. The learned

Magistrate has rejected the application filed by the respondent-accused to appoint handwriting expert for ink age test of the disputed cheque. It has rejected the application, inter alia, by relying upon judgment passed by the Rajasthan High Court in the case of *Manish Singh Vs. Jeetendra Meera*, (Misc. Petition No. 3093/2018), in which the High Court referred to the judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. Jyoti Prakash Mitter*, reported in *AIR 1971 SC 1093*, to hold that there is no mechanism to determine the age of the ink. The expert opinion to check age of the ink cannot help to determine the date of writing of the document because the ink used in the writing of the document may have been manufactured years earlier.

3. The Sessions Court, in the revision, has, though recognized and considered the aforesaid judgment, took exception to the order passed by the learned Magistrate on the ground that the accused has right to get satisfactory opportunity to defend his case. According to the Sessions Court, the doubtfulness of the accuracy of scientific test, which determines the ink, cannot prevent the accused from taking the chance of scientific test for determining age of the ink in writing by handwriting expert.

4. I have heard learned counsel appearing for both the sides at length. Mr. Joshi, learned counsel appearing for the respondent-accused, by taking aid of the judgment of the Hon'ble Supreme Court in the case of *T. Nagappa .VS. Y. R. Muralidhar*, reported in *(2008) 6 S.C.R. 959* contends that the accused has a right to fair trial and has a right to defend himself and for that purpose to adduce evidence in terms of sub section (2) of Section 243 of the Criminal Procedure Code, 1973.

5. There cannot be any dispute on the aforesaid proposition of law but then where the exercise is found to be undertaken in futility, the Courts below will have to be vigilant in entertaining the applications which, even if allowed, has a sealed fate. The learned Single Judge of the High Court of Rajasthan in the case of *Manish Singh* (supra) has, after referring to the various judgments of the High Court as also of the Supreme Court, held that there is no scientific accurate test available for determination of age of the ink.

6. During the course of arguments, the counsel for the respondent submitted that the chemical test could be an answer to the issue as, according to him, by a chemical test, age of the ink may be ascertained with certain accuracy. A query was made as to

whether there exists any scientific laboratory where this test could be conducted, the learned counsel submitted that this facility is available at BARC.

7. This submission has been put to rest by the learned counsel for the petitioner by inviting my attention to the judgment passed by learned Single Judge of Madras High Court in the case of Kanagaraj .Vs. Ramamoorthy, (C.R.P. (MD) No.601/2021 and C.M.P. (MD) No.3344/2021). The issue of the age of the ink arose in the said proceedings as well. The High Court referred judgment in the case of R. Jagadeesan Vs. N. Ayyaswamy, reported in 2010(1) CTC 424. The Court noted thus:

“7. In order to ascertain the correctness of the said statement, this Court had requested the learned Additional Public Prosecutor Mr.N.R.Elango to request either the Director or the Assistant Director, Document Division, Forensic Science Department, Chennai to be present before this Court to explain the position. Accordingly, today, Mr.A.R.Mohan, Assistant Director, Document Division, Forensic Science Department, Government of Tamil Nadu, Chennai is kind enough to be present before this Court. According to him, he is the Head of the document division of the department. On a query made by this Court regarding the above position, he would explain to this Court that there is no scientific method available anywhere in this State, more particularly, in the Forensic Science Department, to scientifically assess the age of any writing and to offer opinion. However, he would submit that there is one

institution known as Nutron Activation Analysis, BARC, Mumbai, where there is facility to find out the approximate range of the time during which the writings would have been made. It is a Central Government organisation. According to him, even such opinion cannot be exact. He would further submit that since it is a Central Government Organisation and confined only to atomic research, the documents relating to prosecutions and other litigations cannot be sent to that institution also for the purpose of opinion. He would further submit that if a document is sent for comparison, with the available scientific knowledge, opinion to the extent as to whether the same could have been made by an individual, by comparing his admitted handwritings or signatures, alone could be made. He would further submit that if there are writings with two different inks in the same document, that can alone be found out. But he would be sure enough to say that the age of the writings cannot be found out at all to offer any opinion.

8. *In view of the above clear and unambiguous statement made by no less a person than the Head of the Department of Forensic Science, I am of the view that the whole exercise adopted in various Courts in this State to send the disputed documents for opinion to the Forensic Department in respect of the age of the writings and the documents is only futile. If any document is so sent, certainly the department will say that no opinion could be offered. As a matter of fact, the Assistant Director would inform the Court that already many such documents, which were sent to them by various Courts in the State for such opinion, have been returned by them with the report that no such opinion could be offered.*

9. *In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due*

to scientific advancements, new methods are invented to find out the age of the writings.”

8. As could be seen, the Assistant Director, Document Division, Forensic Science Department, Chennai, the expert in the field, has stated that there is no scientific method available anywhere in the State, more particularly in the Forensic Sciences Department to scientifically assess the age of hand writing and to offer opinion. The expert further stated that there is one institute known as Nutron Activation Analysis, BARC, Mumbai, (which the counsel for the respondent referred to), where there is facility to find out the proximate range of the time, during which the writing would have been made but the opinion is not exact and further the facility is available only to atomic research and not to the documents relating to the prosecution and other litigation. He has firmly stated that the age of writing cannot be found out at all to offer any opinion.

9. This being the position, there is absolutely no justification to have futile attempt to find out the age of the ink on the instrument under question.

10. The case of the respondent is that he had issued blank cheque Exh.-26 to the petitioner on 05.01.2010 as a security. The

petitioner has misused the cheque by filling up the contents in the cheque in the year 2016. Thus, the respondent has admittedly signed the cheque on 05.01.2010. His contention is that the remaining contents of the cheque were filled up on or after the year 2016. The application was accordingly filed by the respondent before the trial Court to ascertain the age of the ink. The trial Court, by relying upon the judgment in the case of *Manish Singh* supra, has rejected the application for the reason that there is no scientific concrete test available for determination of the age of the ink. This finding has been upset by the Sessions Court in the revisional jurisdiction, only on the ground that the respondent – accused should get sufficient opportunity.

11. To my mind, this exercise would not yield any benefit to either of the parties, considering the expert opinion recorded in *Jagadeesan's case* supra.

12. The respondent failed to show that there exists any mechanism or scientific test to ascertain the age of writing/ink on the instrument/document. In absence thereof the Sessions Court has committed error in reversing the judgment passed by the trial Court.

13. The petitioner, therefore, has successfully made out a case in his favour resulting into following order.

ORDER

- (i) The writ petition is allowed.
- (ii) Judgment and order dated 21.06.2023 passed by Sessions Court, Yavatmal in Criminal Revision Application No.3/2023 is quashed and set aside.
- (iii) Order dated 13.12.2022 passed by Judicial Magistrate First Class (Court No.3), Yavatmal, below Exh.49 in Summary Criminal Case No.2400/2016, is restored.
- (iv) Parties to appear before the trial Court on the scheduled date.

Rule is made absolute in the above terms.

(Anil L. Pansare, J.)

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