

CNR NO.MHAH030019412018

ORDER BELOW EXH.290 IN RCC NO.198/2021.

This is an application under Section 45 of the Indian Evidence Act to sent the disputed fixed deposit receipt placed below Exh.241 and 242 along with admitted signature of the accused for opinion of expert.

2. It is the contention of prosecution that during the course of evidence the accused denied the issuance of fixed deposit receipt placed below Exh.241 and 242. It is the further contention that due to denial of receipt it is necessary to call expert opinion.

3. The accused resisted the application on the ground that he came to be arrested on 11/12/2017 and thereafter charge-sheet filed on 09/03/2018 by investigating officer. It is the further contention that since commencement of trial, it is defence that accused did not issue fixed deposit receipt and accordingly he set up his defence during cross-examination of depositors. As per the accused the prosecution is trying to prolong the case. He prayed for rejection of application.

3. Heard both sides. It appears from the record that application came to be filed with the reason that accused denied about the issuance of fixed deposit receipt placed below Exh.241 and 242. Admittedly, charge-sheet came to be filed on 09/03/2018 and charge came to be framed on 11/07/2018. It also appears from the record that 11 witnesses came to be examined including depositors and investigating officer. It further

appears that the statement of accused came to be recorded and matter was posted for final argument. Since beginning it was the case of prosecution that accused withdrawn the amount of depositors without their signature and accordingly accused set up his defence.

4. Admittedly, accused came to be arrested in connection with the investigation of present proceeding and till today he is in jail. As the case of prosecution was based on the fact that accused issued fixed deposit receipt to various depositors and used the amount of depositors and accordingly the concern investigating officer conducted the investigation. As stated above the evidence of some of the depositors recorded in the matter and accused set up his defence by denying about issuance of disputed fixed deposit receipt placed below Exh.241 and 242. It is a settled law that the permission cannot be granted to either party to fill up the lacuna in the proceeding. The present application came be moved after the fact that accused denied the disputed receipt. In view of aforesaid fact it appears application moved with intent to fill up the lacuna of investigation. Furthermore prejudice will be caused to accused from sending his signature and handwriting alongwith disputed documents for expert opinion at this stage. Hence, application is rejected.

Date:-02/08/2021.

(M.S.Tiwari)  
Chief Judicial Magistrate  
Ahmednagar.