

Order no. 23
Dt. 6/6/26

Sole accused on court bail is present.

Ld. APP is present.

A petition has been filed on behalf of the prosecution praying for a direction upon the accused Tarun Ghosh to furnish specimen signatures for comparison by a Handwriting Expert with certain undertakings produced by PW-1 during trial.

The prayer is opposed by the defence.

Heard the Ld. APP and the Ld. Advocate for the accused. Perused the record.

The present case arises out of a complaint alleging commission of offence punishable under Section 420 IPC. The case of the complainant, as disclosed in the written complaint, is that during the period from 23.02.2016 to 18.03.2016 he supplied 2183 bags of onions to the accused upon assurance of payment. It is alleged that although substantial payment was subsequently made, a sum of Rs.1,29,971/- remained unpaid and despite repeated demands the accused failed to pay the said amount.

It is noteworthy that the written complaint contains no averment whatsoever regarding execution of any written undertaking, acknowledgment, declaration, promise letter or similar document by the accused. The complaint also does not disclose any specific representation made by the accused at the inception of the transaction from which a dishonest or fraudulent intention existing from the very beginning may be inferred.

PW-1, during his examination-in-chief recorded on 10.02.2020, stated that the accused had given four written documents assuring payment of the outstanding amount and further stated that he had brought those documents to Court. Subsequently, during further examination-in-chief recorded on 18.03.2023, PW-1 produced four undertakings and claimed that the same had been written and signed by the accused.

From the evidence of PW-1, it further appears that the said undertakings are of the years 2017 and 2018, whereas the alleged transaction of supply of onions relates to February-March, 2016. Thus, the documents in question are subsequent documents allegedly executed long after the transaction forming the subject matter of the complaint.

The Court further notices from the cross-examination of PW-1 that he admitted that there is no document regarding purchase and supply of onions between him and the accused. PW-1 also admitted that he did not submit any document regarding such sale and purchase before the police and that he had not submitted documents relating to his own purchase of onions.

It further appears from the record that the disputed undertakings were neither referred to in the written complaint nor collected during investigation. The said documents surfaced for the first time during trial through the testimony of PW-1.

Undoubtedly, a criminal court possesses power in an appropriate case to obtain specimen signatures or handwriting for purposes of comparison. However, such power is required to be exercised judicially and only where the proposed evidence appears necessary and relevant for adjudication of the matters in issue.

The question before this Court is not whether such power exists. The question is whether the prosecution has demonstrated the relevance and necessity of the proposed expert examination in the facts of the present case.

The essential ingredient of the offence punishable under Section 420 IPC is the existence of dishonest or fraudulent intention at the inception of the transaction. Mere breach of promise or subsequent failure to discharge a liability does not by itself constitute the offence of cheating.

The prosecution petition merely seeks comparison of signatures appearing on the undertakings allegedly produced by PW-1. However, the petition does not disclose what fact in issue or relevant fact is proposed to be established through such expert opinion, nor does it explain how determination of authorship of the said undertakings would assist the Court in adjudicating the principal question arising in the present trial, namely whether the accused possessed the requisite dishonest intention at the inception of the transaction in the year 2016.

At this stage, the Court is not required to undertake any final assessment regarding guilt or innocence of the accused. Nevertheless, for deciding the present petition, the Court is required to examine whether the proposed expert evidence bears a reasonable nexus with the facts requiring determination in the case.

Upon consideration of the complaint, the evidence of PW-1 and the cross-examination conducted so far, this Court is unable to find any apparent nexus between the proposed expert opinion and proof of the essential ingredients of the offence alleged. Even if the authorship of the disputed undertakings is ultimately established, the prosecution has failed to satisfy the Court as to how such proof would materially advance determination of the issue of dishonest intention at the inception of the transaction.

In the considered view of this Court, the prosecution has failed to establish the necessity of obtaining specimen signatures of the accused for the just decision of the present case. Allowing the prayer in the absence of demonstrated relevance and necessity would not substantially assist adjudication of the real controversy involved in the trial and would unnecessarily prolong the proceedings.

Accordingly, the petition filed on behalf of the prosecution stands rejected.

Fix 04.01.2027 for further evidence. Issue summons upon CSW2 to 4. Accused as before.

Sd/-

JM, Kalna.