

## Sayed Naushad Ali Vs Siddhartha Sankar Dey

**Court:** Calcutta High Court

**Date of Decision:** Jan. 15, 2014

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 243, 243(2), 397  
Negotiable Instruments Act, 1881 (NI) â€” Section 138, 139

**Citation:** (2014) 2 BC 446 : (2015) 1 Crimes 623

**Hon'ble Judges:** Asim Kumar Roy, J

**Bench:** Single Bench

**Advocate:** Prabir Kumar Mitra and Amal Kumar Datta, Advocate for the Appellant

**Final Decision:** Dismissed

### Judgement

Ashim Kumar Roy, J.

The petitioner has been facing his trial in connection with a case relating to an offence punishable u/s 138 of the

Negotiable Instruments Act. During the said proceeding the petitioner prayed before the trial Court for sending the cheque in question to the

handwriting expert for verification as to whether the cheque was filled up in his hand or not. The trial Court rejected such prayer. Against the said

order petitioner moved a criminal revision before the Sessions Court and after the petitioner lost there he has now moved this criminal revision for

the second time before this Court against the self-same order. Admittedly, this is a second revision and on the face of the statutory bar contained in

Sub-section (3) of Section 397 of the Code of Criminal Procedure even invoking the inherent jurisdiction of this Court, such order cannot be

interfered with unless a case is made out showing that the order impugned is manifestly illegal, without jurisdiction and brings out a situation, which

is completely an abuse of process of Court.

2. Although the petitioner has not disputed his signature in the cheque but according to his case the cheque in question was filled up by different

hand. Mere fact the cheque was not filled up by the petitioner when admittedly, the same was drawn on an account maintained by the petitioner

and he is the signatory of the cheque, of course he cannot claim any immunity from being prosecuted u/s 138 of the Negotiable Instruments Act.

Neither the position that the petitioner is the drawer of the cheque does alter nor the presumption u/s 139 of the N.I. Act is defeated.

3. The learned Counsel for the petitioner vehemently contended that in a similar situation, the Hon"ble Supreme Court set aside the order of the

trial Court whereby the trial Court rejected the prayer of the accused person for sending the cheque to the handwriting expert. In this regard, he

referred a decision of the Hon"ble Supreme Court, in the case of Mrs. Kalyani Baskar Vs. Mrs. M.S. Sampornam, and relied on the observation

of the apex Court in the said decision in paragraph 12 which is quoted below:

Para 12. Section 243(2) is clear that a Magistrate holding an inquiry under Cr.P.C. in respect of an offence triable by him does not exceed his

powers u/s 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert

because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing

or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the

respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant

would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the

handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being

given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law

to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential

that rules of procedure designed to ensure justice should be scrupulously followed, and the Courts should be jealous in seeing that there is no

breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application u/s

243, Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As

noticed above, Section 243(2), Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused

has entered upon his defence. The appellant in this case requests for sending the cheque in question, for the opinion of the handwriting expert after

the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is

vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the

Magistrate is erroneous and not sustainable.

4. Going through the said decision, I find that the Apex Court observed, ""Section 243(2) is clear that a Magistrate holding an inquiry under

Cr.P.C. in respect of an offence triable by him does not exceed his powers u/s 243(2) if, in the interest of justice, he directs to send the document

for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to

compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance

of the expert.

5. At the same time, Apex Court also observed as follows:

The appellant in this case requests for sending the cheque in question, for the opinion of the handwriting expert after the respondent has closed her

evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal

proceeding.

6. Therefore, from a plain reading of the aforesaid judgment it is evident that the question whether the cheque should be sent to the handwriting

expert or not was arose in that case when the accused disputed his signature on the cheque in question. Quite naturally, if it is found that cheque

was not signed by the account holder, the same cannot be said to be a valid one and if dishonoured, the account holder cannot also be held liable.

But the case here is completely different. Moreover, the cheque was not returned unpaid because the signature did not tally but on the ground that

it exceeded arrangement.

7. In the four corners of the Negotiable Instruments Act, there is nothing that in Order to make a cheque valid and to be honoured and for its

encashment not only the cheque is to be signed by the account holder but the same to be filled up by his hand. There is no scope to deny payment

against any cheque where signature tallied but the same was otherwise filled up in different hand.

8. I do not find any mistake either in the order of the trial Court or in the order of the revisional Court. This application has no merit and stands

dismissed.

Criminal section is directed to deliver urgent photostat certified copy of this order to the parties, if applied for, as early as possible.