

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APPA] No.483 of 2015
IN
Criminal Appeal No. of 2015
[Yogesh Gulabrai Agrawal Vs. Purnendu Kishor Naval Kishor Prasad]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. S.S. Sitani, Adv., for the Applicant.

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CORAM : V.M. DESHPANDE, J.

DATE : 15th September, 2015.

Heard learned Adv. Mr. S.S. Sitani for the
Applicant.

The proceeding for the offence punishable under
Section 138 of the Negotiable Instruments Act was
preferred by the present applicant against the
respondent. The same was registered as Summary
Criminal Case No. 1430 of 2009. During pendency of
said proceeding, the respondent, who was facing such
prosecution for the offence punishable under Section
138 of the Negotiable Instruments Act vide Summary
Criminal Case No. 1430 of 2009, filed an application for
permission to obtain expert opinion by comparing the
signature on the Composite Money Receipt placed below

Exh.22 with the signature of the respondent-accused obtained before the said Court. The said application is at Exh.33 on record of the court below.

On 13th July, 2010, learned Magistrate allowed the said application, whereby it was directed that the Composite Money Receipt [Exh.22] be sent to the Handwriting Expert appointed by the Govt., for comparing the signature on it with the specimen signature of the respondent on Vakalatnama, cheque and Personal Bond. It was directed that the respondent-accused shall bear all the expenses.

Vide impugned Order dated 8th May, 2015, learned Judicial Magistrate First Court [Court No.26], Nagpur, dismissed the complaint. While dismissing the complaint, learned Magistrate has observed that the burden was on the complainant to prove the contents of the document and that the signature is of the accused on Exh.22. He further observed that the complainant referred the said document to the Handwriting Expert. However, complainant has failed to examine any witness to show that the said document was executed by the respondent-accused.

It is crystal clear that the aforesaid observations are contrary to the record, since the application was moved by the accused himself and no steps were taken by the accused. In that view of the matter, the applicant

has made out a case for admission. Hence application is allowed and the Leave is granted to the applicant to file the appeal.

Criminal Appeal :

Appeal is **admitted**. Call R & P.

Judge

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