

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 682 OF 2022

Hussain M. Ahmedabadwala ...Applicant
Versus
Mayur Mahendra Chheda And Anr. ...Respondents

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Mr. Hitesh V. Jain, Advocate for the Applicant.

Mr. Jatin P. Shah a/w Mr. Snehankita Munj and Ms. Shraddha Kamble,
Advocate for Respondent No.1.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 29th JULY, 2022.

PER COURT:

1. The applicant is prosecuted for offence punishable under Section 138 of Negotiable Instruments Act.
2. The trial has commenced. The affidavit in evidence of the complainant was placed on record. The complainant is cross examined at the instance of the applicant/accused.
3. The applicant preferred an application before the trial Court for forwarding the promissory note to the handwriting expert for its opinion on the ground that, the the petitioner is disputing his signatures on the promissory notes. The application is rejected.

4. Learned Advocate for the applicant submitted that the signatures appearing on the promissory note relied upon by the complainant are forged and fabricated. During cross examination of the complainant, the suggestion in that regard was given to the complainant. On perusal of the signatures appearing on the promissory note and the cheque, variation is apparent. The applicant is required to rebutt the presumption under Section 139 of the Negotiable Instruments Act. The handwriting experts opinion is necessary. The circumstances existing on record indicate that the signatures appearing on the promissory note are required to be forwarded to the handwriting expert. The absence of report of handwriting expert, grave prejudice would be caused to his defence. He relied upon the decision of the Gujrat High Court in the case of Shashikant Shamaldas Patel V/s. State of Gujarat delivered on 24th June, 2022, wherein the Gujrat High Court had taken into consideration the decisions of the Apex Court in the case of **T. Nagappa V/s. Y.R. Murlidhar reported in AIR 2008 SC 2010** and **Kalyani Baskar V/s. M.S.Sampoornam reported in 2007 (2) SCC 258**. It is submitted that the ratio laid down in the said decisions is squarely applicable to the present case. The learned Magistrate has committed an error in rejecting the application seeking directions to forward document to handwriting expert.

5. Learned Advocate for the respondent/complainant submitted that, merely on the ground that the accused denies his signatures, there is no cause for forwarding the documents to the handwriting expert. The demand notice was issued to the accused which was not claimed by him. Belated attempt is being claimed to deny the signatures appearing on the promissory note. On perusal of the signatures appearing on the cheques which are not disputed and signatures reflected on the promissory note, no variation can be noticed. The trial Court is empowered to peruse such documents in accordance with Section 73 of the Evidence Act. Learned Magistrate has rightly rejected the application. The complaint dated 1st June, 2020 was forwarded to the Police belatedly on 18th June, 2020. Apparently, in the said complaint, the applicant has denied the signatures appearing on the promissory note as well as on the cheques. Thus, attempts are made to delay the proceedings. The complaint was forwarded to the Police after summons was issued by the trial Court. Hence, this application may be rejected.

6. I have perused the documents on record. The complaint is filed for offence under Section 138 of Negotiable Instruments Act. There was no reply to the demand notice. The evidence of the complainant has been recorded and he is being cross examined by

the defence. Except the suggestions, prima facie there are no circumstances to support the claim of the petitioner. The trial Court would consider the factual aspect at the relevant time. The learned Magistrate has assigned reasons for rejecting the prayer for forwarding the documents to the handwriting expert, I do not find any reason to deviate from the view taken by Magistrate. No case is made out to grant relief prayed in this application. The decisions relied upon by the learned Advocate for the applicant were delivered in the facts of the said case.

ORDER

Criminal Application No.682 of 2022 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)