

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO. 1238 OF 2022

Shri Sayad Ayaz Ali s/o Magdum Ali,
 Age 47 years, Occ.: Business, r/o Plot
 No. 24, Alfiya House, Rathod Lay-Out,
 Jafar Nagar, Police Line Takli, Nagpur.

... APPLICANT _

VERSUS

Shri Umesh Madanchand Mohta,
 Age : about 50 years, Occ. : Business,
 R/o Plot No. 204, Behind State Bank
 of India, Mohta Apartments,
 Chhaoni, Nagpur.

... NON-APPLICANT

Shri A.R. Dhoble, Advocate for the applicant.
 Shri Rajesh Bachwani, Advocate for the non-applicant.

CORAM : VINAY JOSHI, J.
DATED. : 21.09.2022.

ORAL JUDGMENT :

Heard. **ADMIT.**

2. The matter is taken up for final hearing by consent of
 learned Counsel appearing for the parties.

3. The applicant is an accused in Criminal Case bearing SCC No. 323151 of 2012 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the NI Act'). The applicant has challenged the order dated 10.08.2022 passed by the Chief Judicial Magistrate, Nagpur whereby the applicant's urge for appointment of Handwriting Expert to compare signatures, has been rejected.

4. Learned Counsel for the applicant would submit that the real nature of transaction was something else than what has been projected by the non-applicant in his compliant. It is stated that though the applicant (accused) has received an amount of Rs.7,50,000/-, however it was not a hand loan, but towards an agreement to sell executed by him in favour of non-applicant Umesh Mohta and one Amin Malik. It is contended that the applicant has taken such specific defence however, as the non-applicant (Complainant) has denied the signatures of Amin Malik and one witness namely Mohd. Fazal on the register of notary, comparison of signatures through Expert is necessary. It is submitted that signatures of Amin Malik and Mohd. Fazal are available for comparison in another cases filed by them in terms of Section 138 of the NI Act. Moreover, it is contended that the applicant has obtained specimen signatures of Mohd. Fazal from his banker for the purpose of comparison.

5. The other side resisted this application by contending that though the case was of the year 2012, the applicant is delaying the hearing of case for one or other reason. It is submitted that both the persons whose signatures have sought to be compared, are not the party to the proceeding. Having regard to the summary nature of case, said exercise is unwarranted.

6. It is the case of the non-applicant that he gave hand loan of Rs.7,50,000/- to the applicant and for repayment of hand loan a disputed cheque was issued, which was dishonored. On the other hand, the applicant came with a defence that he has executed an agreement to sell jointly, in favour of non-applicant and one Amin Malik. Towards said transaction, he has received the disputed cheque which according to him, has been misused by stating that it is towards repayment of hand loan. It reveals from the reply to the statutory notice and the cross-examination that such a defence was put to other-side. The reason for comparison is mainly that the non-applicant (Complainant) during his cross-examination denied the execution of agreement and consequential signatures of Amin Malik and witness Mohd. Fazal on the notarial register.

7. Pertinent to note that, though notarial registry bears the

name of non-applicant (complainant), however admittedly, he has not signed on the registry. The matter would have been different if the non-applicant has denied his own signature, but it is the case that he has denied signatures of somebody, who are not the party to the proceeding. The entire defence is on the basis of agreement to sell, which is not available on record rather it is stated that it has been seized by Income Tax department. It is a matter of appreciation as to how much weight shall be given to denial of signatures by the non-applicant of somebody else. Moreover, the applicant has already examined the notarial public who has ascertained about execution of documents as well as signatures of the parties.

8. Having regard to above facts, at the fag end of the trial it is not warranted to undertake the exercise of comparison. The application carries no merits, hence, stands dismissed. No order as to costs.

(VINAY JOSHI, J.)

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