



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

...

CRIMINAL APPLICATION (APL) NO. 893/2023

Sandip s/o Sharadrao Mankar

.. Applicant

versus

Tushar s/o Nattuji Bobde

.. Respondent

.....
Ms.Isha D. Thakre, Advocate for the applicant/s

None appears for the non-applicant/respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 26th September, 2023.

PC:

On previous date i.e. 12.09.2023, the following order was
passed:-

“ *Heard for some time.*

Learned 19th Judicial Magistrate, First Class(Spl.Court for 138 N.I.Act) Nagpur has rejected the application filed by the applicant(original accused) under Section 91 of the Code of Criminal Procedure, 1973 seeking direction to complainant to produce copies of cheques mentioned in sale deed, bank account statement, the account statement of Ramji Ghormade and the reply send by the accused to the notice. The application has been rejected on the ground that the accused is facing trial under section 138 of the Negotiable Instruments Act (N.I.Act) and that, it is for the complainant to decide as to in which way, he would like to prosecute his case and that the accused cannot seek directions or compel the complainant to produce documents and that the accused has right and opportunity to lead defence evidence as per his choice.

This reasoning to my mind is perverse for the simple reason that the accused in the proceedings under Section 138 of the N.I.Act can rebut the presumption even in cross-

examination of the complainant. The production of documents is a crucial issue, of course in a given case, the Magistrate will be justified in rejecting the application but not on the grounds put forth by him in the present case.

The learned counsel for the non-applicant seeks time to place on record the rulings in support of the findings rendered by the learned Magistrate. Time granted, but as a last chance.

Stand over to 26.09.2023.”

2. None appears for the non-applicant today. It could thus be presumed that the counsel for the non-applicant could not lay his hands on any judgment that supports the findings rendered by the learned Magistrate.

3. In view of the above and for the reasons set out in the order dated 12.09.2023 the Criminal Application is allowed. The order dated 29.05.2023 passed by the Learned 19th Judicial Magistrate, First Class, Nagpur is quashed and set aside. Application Exh.22 is restored on the file of learned JMFC, Nagpur who shall consider the same afresh in accordance with law. The parties to appear before the learned Magistrate on scheduled date.

4. The Application is disposed of in above terms.

[ANIL L. PANSARE, J.]