

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

CRIMINAL APPLICATION (APL) NO.1148 OF 2022

Sanjay S/o. Santosh Gupta

.VS.

ICICI Bank Ltd.

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

None for the applicant

Mr M. R. Joharapurkar, Advocate for the non-applicant

CORAM : G.A. SANAP, J.

DATE : FEBRUARY 16, 2023.

Learned Advocate for the applicant is absent. Learned Advocate for the non-applicant is present. With the assistance of the learned Advocate for the non-applicant, I have gone through the record and proceedings.

2. In this application, the challenge is to the order dated 26.07.2022 passed by the learned Civil Judge Senior Division and Additional Chief Judicial Magistrate, Special Court under Section 138 of the N. I. Act, Nagpur, whereby the learned Judge was pleased to reject the application made by the applicant for referring the cheque in question to handwriting expert to ascertain the age of the ink and contents of the cheque. The proceeding before the learned Judicial Magistrate First Class (Special Court under Section 138 of N. I. Act) filed

by the non-applicant is pending for last seven years. The non-applicant has examined in all three witnesses. The cheque has been exhibited. The statement of accused/applicant under Section 313 of the Code of Criminal Procedure has been recorded. After recording his statement, the matter was placed for defence evidence. The matter, as can be seen from the record, was posted for recording the defence evidence since 2017. The applicant/accused, thereafter, made various applications for summoning the witnesses. It is seen that the handwriting expert was summoned without there being any report of the handwriting expert. Learned Judge in the order has recorded that the order to summon the handwriting expert was obtained by misrepresentation. It is also stated that when the handwriting writing expert appeared his evidence was not recorded. It is seen that on the date of the appearance of the handwriting expert request was made to allow handwriting expert to take the photographs of the cheque. The said prayer was rejected. The order rejecting the prayer was carried to this Court. This Court granted liberty to the accused to make a fresh application. In view of the liberty, the applicant/accused made application for referring the cheque to the handwriting expert to ascertain the age of the ink and contents of the cheque.

3. Learned Judge by reasoned order dated 26.07.2022

rejected the said application. The main reason recorded by the learned Judge for rejecting the application was the admission of the disputed cheque and the signature on the disputed cheque by the applicant. Learned Judge also observed that the attempts have been made by the applicants since 2017 to delay the proceedings. It is seen that the amount of cheque is more than Rs. Seventeen Lacs. Learned Judge found that this application was nothing but an attempt to delay the trial. On going through the proceedings particularly the fact that the issuance of cheque and signature over the disputed cheque being admitted by the accused/applicant there would be no need or necessity to refer the cheque to the handwriting expert. Besides the belated realization by the accused to have the opinion of handwriting expert is totally unacceptable. Reasons have not been placed on record for not displaying due diligence at the appropriate time. On going through the record, I am of the view that there is no substance in the application. The application is not bonafide. Learned Additional Chief Judicial Magistrate was, therefore, right in rejecting the application. I do not find any reason to set aside the well reasoned order by the learned Additional Chief Judicial Magistrate. As such, the application stands **dismissed**.

(G. A. SANAP, J.)

Namrata