



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 03 OF 2025

Shri Durjan Lekhram Sahu Vs Shri Krishna Rao Shankar Rao Bawane

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Manoj Kumar Mishra, counsel for applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/01/2025.

1. By preferring this application, the applicant has challenged the order passed by the Judicial Magistrate First Class, Nagpur, in SCC No. 11411/2017 dated 31/01/2024, by which the application of the present applicant for seeking the opinion of a handwriting expert for proving the signature and thumb impression on documents Exhibit Nos. 30 to 32 is rejected.

2. Present applicant is the original accused in criminal complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1998. As per the allegation by the complainant, he is a businessman and is a proprietor of M/s Parvati Job Work, which deals in Timber and other allied works. Out of business transaction, the accused, who is well acquainted with the complainant, approached the complainant in April 2013 with the proposal that their firm has demarcated the layout in Kh. No. 139, 147/3, P. H. No. 17, Mouza : Kalamana, Tah. and District Nagpur, consisting of various plots.

3. After discussion, the complainant approached and agreed to invest his money in the above-mentioned land. The above-mentioned land was an unauthorized layout, and the present applicant assured him that it would be regularized. Accordingly, the consideration amount of Rs. 35,00,000/- was fixed. The complainant had paid the amount of Rs. 35,00,000/- in cash towards the purchase of plots No. 56, 65, 68, 73, 101, 104, 105, 106, 115, 117, and 119, total admeasuring 10459.1 Sq.Ft. The balance amount of Rs. 29,50,000/- was agreed to be paid within 24 months. The complainant has narrated the details about the payment made by him. However, as per the agreement, the accused has not executed any sale-deed of the said plots in his favour, and therefore the complainant demanded the entire amount towards the said legal and enforceable debt. The present applicant has issued a cheque bearing No. 453904 dated 25/04/2017 for Rs. 40,00,000/- drawn on Vijaya Bank, Wardhaman Nagar, Nagpur, in favour of the complainant. The said cheque was deposited, and it was returned with an endorsement funds insufficient on 27/04/2017, therefore complainant issued a notice on 09/05/2017. After receipt of the notice, the amount was not paid and therefore, he constrained to file the complaint.

4. The learned Magistrate has taken the cognizance of the complaint and issued the summons to the present applicant. The present applicant appeared before the Court, and the trial was commenced. The

defence of the present applicant was that the cheque Exhibit No. 30 does not bear his signature, however, no steps are taken by the present applicant, at the relevant time for seeking directions from the Court to examine the signatures through handwriting expert. After conclusion of the evidence, the statement under Section 313 of Cr.PC. was recorded, wherein the present applicant has stated that he want to examine himself on oath and also want to examine witness. But instead of filing an application for examination of the witness, he filed an application stating that he wants to seek the opinion of the expert. The trial Court has after considering the entire material observed that, the complaint is pending before the Court since 2017. For the first time, the accused has moved this application on 14/11/2022. At the time of filing the complaint, the complainant has placed on record the photo copies of all these documents. Thus, in spite of having an opportunity of more than five years, the accused has not taken proper steps within reasonable time. Considering all these facts, the application was rejected.

5. Being aggrieved with the same, the present application is filed by the applicant contending that sufficient opportunity is to be granted to him to adduce the evidence.

6. Heard learned counsel for the applicant, perused the record. It reveals that cross-examination of the complainant was concluded on 18/02/2022, wherein the

defence was raised that the cheque Exhibit No. 30, does not bear the signature of the accused, which is denied by the complainant. Thereafter, for four years, no steps are taken by the present applicant to get the signature appearing on the cheque to be examined from the expert. It is well settled that law helps to the diligent and not the negligent. At the fag end of the trial, it seems that only to prolong the matter, this application came to be filed by the present applicant.

7. After hearing learned counsel for the applicant, I do not find any merit in the application, in view of that, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]