

MHMM180114042018



C.C.NO.1784/SS/2018

M-S SHREE CHARBHUJA
JEWELLERS Vs. M-S SAHEB
JWEWLLERS

IN THE COURT OF METROPOLITAN MAGISTRATE, 58TH COURT,
BANDRA, MUMBAI
ORDER BELOW APPLICATION EXH.43

1. This is an application filed on behalf of the accused for sending the documents of invoices to handwriting and signature expert for seeking opinion as to the signatures of accused on the office copies of invoices filed by the complainant in his evidence at Exh.33 to 39.
2. It is contended on behalf of the accused that accused is not admitting said documents relied upon by the complainant. The complainant has forged said documents of invoices. There is no legal enforceable liability upon the accused. The invoices are bogus. The signatures over the invoices are of not of accused. Hence, this application for sending the invoices to the handwriting expert for opinion.
3. Complainant objected the application vide say on the same application. According to the complainant the application is baseless and after thought. The same is given to delay the proceeding. All invoices are signed by the accused. The cheque issued against said invoices are honoured by the accused. Accordingly prayed for rejecting the application.

4. Heard, Advocate R.K.Tiwari holding Advocate for A.K.Shukla and Associates for the accused. Heard, Advocate Govind Ghogare for the complainant.

5. I have gone through the entire proceeding. Before touching to the legal aspect of merits or demerits of the application, it is pertinent to note that today the matter is kept for cross examination of the complainant by the accused. The application of the complainant filed u/sec.143(A) of Negotiable Instrument Act is rejected.

6. Now coming to the legal position as to seeking opinion of handwriting expert. It is well settled law that the handwriting or signature of the parties can be verified and compared by the court himself if there is no any other glitch. The accused want to sent the carbon copies of the invoices placed at Exh.33 to 39 for seeking opinion of handwriting expert in respect of signature of the accused. The signature of the accused on present application if compared with the signatures of the accused on invoices Exh.33 to 39, appears same if seen by naked eyes. Secondly, the burden of proof to prove the invoices in question is on the complainant and not on the accused. The accused has ample opportunity to put his defence in cross examination of the complainant. Further these documents are carbon copies of the original and not the original documents. Therefore, the same can not be sent for seeking opinion of handwriting expert.

7. The accused has not taken the defence alleged by him in his notice reply. Looking into all above legal aspects, I do not found any merit in the application of the accused. There is reason to believe that the application is moved to protract the trial and not bonifide. Hence, I pass following order.

ORDER

1. Application is rejected with cost of Rs.1,000/- to be paid to the complainant.
2. Costs are condition precedent to exercise right of cross examination of the complainant by the accused.
3. Order dictated and pronounced in open court.

Date : 03.07.2023

(M. P. Saraf)
Metropolitan Magistrate,
58th Court, Bandra, Mumbai.
J.O.Code: MH01362