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**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS,  
KOTDA SANGANI**

**Criminal Case No. 886/2023**

**: ORDER BELOW APPLICATION EXH. 71 :**

1. The present application has been preferred by the accused vide **Exh. 71**, praying to send the disputed cheque for the opinion of a handwriting expert as per section 45 of Indian evidence act.. The Ld. Advocate for the accused submits that during cross-examination, it was brought on record that the accused is **illiterate**. Consequently, it is contended that the accused neither filled the details nor signed the cheque. The defense relies on Section 39 of the B.S.A and section 45 of I.E. act to seek expert opinion to prove that the handwriting and signature do not belong to her.

2. The Complainant has strongly objected vide written objection Exh. 78, arguing that the application is not maintainable as per law. It is submitted that the evidence of the defense side accused and two witnesses has already concluded. Furthermore, the accused did not raise this specific plea or demand an expert opinion when her Further Statement under **Section 313 of the CrPC** was recorded.

3. The Complainant relies on the following judgments of the Hon'ble Supreme Court to pray for rejection with costs:

- **Oriental Bank of Commerce v. Prabodh Kumar Tewari** (Criminal Appeal No. 1260 of 2022).
- **Manorama Naik v. The State of Odisha** (Criminal Appeal No. 423 of 2022).

4. Heard the Ld. Advocates for both sides and perused the record.

5. This Court relies on the ratio laid down in ***Oriental Bank of Commerce v. Prabodh Kumar Tewari (Criminal Appeal No. 1260 of 2022)***. The Hon'ble Supreme Court held in para 15, 17 that, "15. A drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The presumption arises under Section 139. "17. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by the drawer but by another person, this is not relevant to the defense whether the cheque was issued towards payment of a debt or in discharge of a liability. "

In ***Ajitsinh Chehuji Rathod v. State of Gujarat (2024 SCC OnLine SC 77)***, the Hon'ble Supreme Court held that, "4. During the course of trial, the appellant preferred an application dated 13th June, 2019 before learned trial Court with a prayer to send the cheque to the handwriting expert for comparison of the handwriting as well as signature appearing thereon with a plea that his signatures had been forged on the cheque in question. The learned trial Court rejected the application vide order dated 13th June, 2019 itself observing that the application was aimed at delaying the trial. The learned trial Court further observed that the matter was at the stage of defence and the accused could lead evidence to prove his claim pertaining to mismatch of signatures."

16. Thus, we are of the view that if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque."

Further, in ***Manorama Naik v. The State of Odisha (Criminal Appeal No. 423 of 2022)***, the Apex Court observed that the opinion of a handwriting expert is not the only mode of proving a signature; it can also be proved under Sections 45, 47, and 73 of the Evidence Act. Since the defense evidence is already closed, reopening the stage for expert opinion is not warranted.

**6. Now after considering the application and hearing both the sides it appears that** The ground of being "illiterate" was available to the accused since the inception of the trial. However, the accused chose to remain silent on this aspect during the Section 313 statement and throughout the defense evidence. Moving this application vide Exh. 71 *after* the recording of the defense evidence is a clear abuse of the process of law, intended solely to protract the proceedings and delay the trial and further considering the above judgments expert opinion is not the only way to contend the signature of the cheque. The Hon'ble Supreme Court has repeatedly deprecated such dilatory tactics. Therefore, to deter such conduct, this application deserves to be rejected with costs.

**: ORDER :**

1. The Application filed by the accused vide **Exh. 71** is hereby **REJECTED with cost of Rs. 1,000/- (Rupees ONE Thousand Only)**.
2. The cost shall be deposited with the Taluka Legal Services Authority (TLSA), Kotda sangani Rajkot, and the receipt thereof shall be produced on record on the next date.
3. **Pronounced in open Court today on the 9th day of February, 2026.**

Kotda sangani  
09/02/2026

Rutvij Falgunbhai Trivedi  
J.M.F.C.  
Kotda sangani GJ01748

