

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
JMFC.,AT DEVANAHALLI**

Present: Sri. PRATHAP KUMAR. N.,B.A. L.L.B.,
Prl. Civil Judge & JMFC.,
Devanahalli.

Dated this the 22nd day of November, 2022

C.C.No.2063/2015

Complainant: Mohammed Ali

V/S

Accused : Parushuram @ Babu

**ORDER ON APPLICATION UNDER SECTION 45 R/W 73
OF INDIAN EVIDENCE ACT**

This order arising out of application filed by the accused U/Sec.45 of Indian Evidence Act.

2. The accused stated in his application that, accused has not obtain any hand loan from complainant and also not issued cheque i.e., Ex.P1 in favour of complainant at any point of time as alleged by him, further accused has issued blank cheque in favour of one Kalandhar without put his Singapore on the Ex.P1, the said kalandhar and complainant are the friend and they themselves colluded together and

created the Ex.P1 by foregoing accused signature on the Ex.P1 and filed false and frivolous complaint against him with an intention to harass the accused by one or pretext, hence sending the admitted/specimen signature of the accused and disputed signature of th accused on Ex.P1 to handwriting expert and call for his report or opinion. Hence prays to allow the application.

3. On other hand, the complainant opposed the application filed by the accused U/Sec. 45 of evidence Act through filing written Objection and stated that, in the contents of this application are not true and correct, this application is not maintainable either in law or on facts, at the outset it is pertinent to note that the exhibit P1 chque is dishonored by bank on the ground of funds insufficient, but not on the ground of signature differ it means the bank has accepted this signature of the accused and therefore the question of verification of the signature of the accused at this stage as alleged by him doesn't arise at all, this application is only with a malafide intention to protract the proceedings of the case and with a malafide intention to cause loss and damage to complainant. Hence, application may kindly be dismissed with cost.

4. Both respective counsels have filed their written argument on the application filed U/Sec. 45 of Indian Evidence Act.

5. Heard both sides.

6. The points that arising for my consideration are as follows:

- 1. Whether the accused is made out sufficient grounds to allowing this application?**
- 2. What order?**

7. My findings on the above points are as under:

Point No.1: In the Affirmative

Point No.2: As per the final order for the following

- : REASONS : -

08.POINT NO.1: The complainant has filed this complaint U/Sec. 200 Cr.P.C. for the offence punishable U/Sec.138 NI Act. After taking cognizance, this Court has issued summons to accused and he was appeared through his counsel and enlarge on bail. After that, this Court was recorded plea but accused has not pleaded guilty of the offence punishable U/Sec.138 N.I. Act and claiming to be

trial. After that, complainant got examined himself as PW-1 and got marked as many as 7 documents as Ex.P-1 to P-7 and lead further more one independent witness by name Sri. Muniraju as PW-2.

10. During the course of cross-examination of PW-1, accused has taken specific defence that, accused has not issued any cheque in favour of complainant and having no legal liability towards payment of amount to complainant as mentioned in the Ex.P-1. Further accused has taken specific defence that, he was handed over blank cheque to one Kalandar without put the signature on Ex.P1, the said Kalandah has initiate this proceedings through complaint by created accused signature. The said specific defence is proved by the accused by adducing evidence or documents, further it is bounden duty of the accused to rebut the case of complainant U/Sec. 139 of NI Act. Under such circumstances, accused has right to question ink, signature used in Ex.P-1, writing of the Ex.P-1 and age of the Ex.P-1.

11. If accused failed to rebut the case of complaint by adducing evidence or document it can be presumed that, accused has fail rebut the case of complainant. If this application is decline to allowing more harm will cause to the accused and right of the accused will be violated. If this

application is allowed, no harm will cause to the complainant. Further the Hon'ble High Court of Karnataka has held that, in the case of **Annappa Maruti Magadum V/s. Karnataka Multipurpose Souhard Shakari Ltd., Belagavi** which is reported in **2020(1) KCCR 815**

A. Evidence Act, 1872 Sec.45 and 73 - Expert opinion- Application filed to send the cheque in question for examination by expert regarding age of ink-Signature-application rejected on technical grounds by the Magistrate -Order of Magistrate challenged as not correct and proper - case law cited by both parties- Court held, keeping in view provision of Section 203 of Cr.P.C. the application is to be allowed -Application allowed and disputed cheque was referred to examination by expert.

B. Negotiable Instruments Act, 1881- Sec . 132, 118, 20-cheque in question referring to expert -Evidence Act, 1872- Section 73 and d45 - On facts the Court allows criminal petition and referred the disputed signature for the opinion of an expert.

In view of aforesaid discussion and ruling cited above, it is fit case to allowing this application. *I answer point No.1 in the Affirmative.*

12. Point No.2: In view of the above discussion, this court proceeds to pass the following:

ORDER

Application filed by the accused U/Sec. 45 of Indian Evidence Act is hereby allowed.

Accordingly, disputed Ex.P-1 is forwarded to concerned Forensic Science Laboratory for the purpose of examination or analysis and with direction to submit report to the Court in shield manner, on the cost and expenditure of accused.

Accused is directed to deposit cost and expenditure for analysis and examination of Ex.P-1, whatever the amount fixed by concerned FSL.

Office is directed to send the Ex.P-1 and chief of Dw1 on dated 14-05-2019 to the concerned FSL after depositing cost and expenditure.

(Dictated to Stenographer directly on computer by him, in the same is corrected and pronounced by me in the open court on this the 22nd day of November 2022.)

(Sri. Prathap Kumar. N)
Prl. Civil Judge and JMFC.,
Devanahalli.

