ORDERS ON APPLICATION UNDER SECTION 94 OF BNSS

The present application is filed by the complainant when the case was posted for arguments. The present application is filed seeking this Court to summon the Bank Manager, Canara Bank, Koppa Branch for evidence and produced the documents as per the memo of instructions furnished alongwith the application in the interest of justice and equity.

2. The present application is supported with the affidavit of the complainant, wherein the complainant has stated that he has filed the present cheque bounce case against the accused and that the accused has given him the cheque No.919333 dated 1.9.2021 of Rs.4,00,000/- pertaining to the bank account of the accused with No.09022200082983 of the Syndicate Bank, Koppa Branch. It is stated that the said cheque was signed by the accused and given in the name of the complainant and the complainant presented the said cheque before the Karnataka Bank, Koppa Branch on 18.09.2021 for encashment as the complainant is having a bank account in the said bank.

3. The complainant has further stated that at that time the Syndicate Bank had merged with the Canara Bank as per the order of the Indian Government. It is further stated that the said merged Canara Bank has mentioned that, "Syndicate Bank, cheque valid till 30.06.2021. 1.07.2021 on wards Syndicate Bank cheque is not valid, for this reason the said cheque was bounced back. Kindly take new cheque book" in the endorsement dated 18.09.2021. The complainant has stated that the said endorsement is marked in evidence before this Court.

4. The complainant has further stated that though the Syndicate Bank, Koppa Branch is changed as Canara Bank., Koppa Branch, in Ex.P1 cheque, Canara Bank is mentioned and imprinted, and the said aspect was not kept is mind by the Bank when the said cheque came for encashment before it. It is stated that the apart from the said aspect, the witness can verify whether there was sufficient funds in the bank account of the accused in respect of the amount mentioned in the said cheque and has to depose in respect

of it before the Court. The complainant has stated that he has filed memo of instruction alongwith the present application, which the bank has to verify and also produce the documents sought in the same. It is stated that if the application is allowed then it will not cause any hardship to the other side and the said witness and the documents are necessary for the proper adjudication of the matter. Hence, it is prayed to allow the application.

5. The learned counsel for the accused has filed objections to the present application contending that the application is not maintainable under law or on facts and is liable to be dismissed in limine. It is contended that the contents in the affidavit are not reliable and the complainant is trying to collect evidence after the completion of evidence on his side. The accused has contended that the query about the amount in the account is clearly collection of evidence after the completion of evidence of the complainant. The accused has contended that at present there is no question regarding funds sufficient or insufficient. It is further contended that the cheque is invalid as per the guidelines from the RBI and Government of India and it is clearly mentioned in the endorsement which is marked as Ex.P2. It is contended that at this juncture the present application is not maintainable and no banker is empowered to advert about the funds in the account of the accused or any account holder, as it is clearly barred by RBI guidelines and Government norms and it will clearly violate Article 21 of the Indian Constitution. It is contended that the complainant has submitted memo of instructions prematurely and it is very prejudicial and will cause injustice to the accused. Hence, prayed to dismiss the application with exemplary costs.

6. Heard both sides and perused the materials on record.

7. The points that arise for my consideration are as under:

1. Whether the application filed by the complainant under Sec.94 of BNSS deserves to be allowed at this stage?
2. What order?

8. My answer to the above points are as follows:

Point No.1: In the Negative,

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

REASONS

7. Point No.1: This is a private complaint lodged by the complainant against the accused punishable under Sec.138 of Negotiable Instrument Act. When the matter stood for arguments, the counsel for complainant filed the present application and opposed by the accused.

8. The contention of the complainant is that the said documents are very necessary to prove his contentions in respect of Ex.P1 cheque and the said bank Manager be examined as witness. There is no dispute that the erstwhile Syndicate Bank has merged with the Canara Bank on 1.4.2020. The complainant has stated that the said merged Canara Bank has mentioned that, "Syndicate Bank, cheque valid till 30.06.2021. 1.07.2021 on wards Syndicate Bank cheque is not valid, for this reason the said cheque was bounced back. Kindly take new cheque book" in the endorsement dated 18.09.2021. The complainant has stated that the said endorsement is marked in evidence before this Court. The complainant has further stated that though the Syndicate Bank, Koppa Branch is changed as Canara Bank., Koppa Branch, in Ex.P1 cheque, Canara Bank is mentioned and imprinted, and the said aspect was not kept by the Bank when the said cheque came for encashment before it.

9. It is pertinent to note that on Ex.P1 cheque " NOW CANARA BANK" is imprinted, which shows that the said fact is in the knowledge of the accused when he is alleged to have given the said cheque to the complainant. It is not possible for the said imprint to appear on the cheque subsequently when it has passed on from the drawer to the drawee or holder in due course. The knowledge and intention of the person who is giving his cheque to another person for encashment is important. On perusal of the complaint averments it shows that the complainant has stated in para 2, 5th line, "After repeated demands made by the complainant, the accused has issued a cheque bearing No.919333 drawn on Syndicate Bank, Koppa Branch, dated 01.09.2021 for Rs.4,00,000/- in favour of the complainant, for repayment of the loan amount".

10. The objections raised by the accused are sustainable as a Banker cannot be called at this stage to depose whether there was sufficient funds in the bank account of the accused in respect of the

amount mentioned in Ex.P1 cheque. The reason mentioned in Ex.P2 is of one of the reasons for the dishonour of the cheque at Ex.P1.

11. It is to be noted that, the first and foremost requirement of **Section 91 of Cr.P.C** is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. This section presupposes that, when the document is not produced process may be initiated to compel production thereof. The width of the powers of that section was unlimited but there were inbuilt inherent limitations as to the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability to fulfill the task or achieve the object. Hence, at this stage the question of directing the said bank to produce the documents and to depose before the Court as per the memo of instructions does not arise. Hence, I proceed to pass the following;

ORDER

The Application filed by the complainant U/ Section 94 of BNSS is hereby dismissed with a cost of Rs.200/-.

Call on arguments finally by **6.2.2025.**

Sd/- 03.02.2025.
(Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Koppa.