

**ORDERS ON APPLICATIONS FILED UNDER
SECTION 173(5) r/w 200 OF CR.P.C**

The present application is filed at the stage of cross examination of PW1. The Complainant has filed the present application seeking permission to produce additional documents on the ground that the same is necessary to show his financial capacity.

2. The accused having filed his statement of objections to the present application, has contended that Section 173(5) of Cr.P.C., does not permit production of documents at belated stage after chief examination of PW1. All the relevant documents ought to have been submitted along with the complaint itself. The documents sought for production does not belong to complainant. No proper grounds are urged in support of this application and accordingly sought for rejection of the application.

3. Having heard the arguments addressed by learned counsel for accused, this Court has carefully perused the entire materials available on record as well as the written arguments submitted by learned counsel for complainant. Now the following points do arise for consideration:

- 1) Whether the complainant has made out sufficient grounds to permit him to produce additional documents?

2) What order?

4. The above points are answered as following:

POINT No.1 : In the affirmative

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

REASONS

5. POINT NO.1: This is a case wherein the offence under Section 138 of N.I.Act, is alleged. At the stage of cross examination of PW1, the complainant has filed the application seeking permission to produce bank account statement. The only ground urged by the complainant is that the documents sought for production are very much necessary in support of his case so as to prove his financial capacity. It is apparent that Section 173(5) has no application to the case on hand as this is a case other wise than on police report and what Section 173 Cr.P.C., provides is that the filing of final report by the investigating agency. Learned counsel for complainant has placed his reliance on the decision of our Hon'ble High Court in the case of **Sridhar Vs State of Karnataka** in **2005 ()1) KCCR 27** wherein the matter for consideration was filling of additional charge sheet with additional documents. As noted earlier, this is not the case on police report and thus the decision referred supra does not apply to case on hand.

6. Be as it may, it is now a settled principle of law that mere quoting of wrong provision of law does not render in rejection of prayer and that the technicalities should not defeat substantial justice. It is the bank account statement for production of which the complainant is seeking permission. The documents sought for production is with respect to financial capacity of the complainant. The complainant in the case of present nature cannot be expected to initially lead evidence to show that he had the financial capacity. This is as held by Hon'ble Apex Court in the case of **Tedhi Singh Vs. Narayan Dass Mahant, 2022 SCC OnLine 302.** In view of the presumption under Section 118 and 139 of N.I.Act, the complainant has got initial burden of showing the ingredients of Section 138 of N.I.Act. Thereupon it is on the accused to put forth the defense which may be probable in order to rebut the presumption raised in favour of complainant. Discharging the initial burden does no way close the doors of proving other aspects by the complainant as it is for the complainant to prove his case.

7. Learned counsel for complainant has further placed his reliance on the decision of our Hon'ble High Court in the case of **G.T.Thippaiah Vs Rani M Alex & Anr in Crl.P. No. 79/2022 DD 05.03.2022** wherein it is held that in view of Section 91 and 311 Cr.P.C., complete opportunity is to be given to parties in an criminal trial. Further,

refusing the opportunity to the parties to a criminal proceedings to produce further evidence will be against the decision of Hon'ble Apex Court in the case of **Varsha Garg Vs. State of MP & Ors, 2022 SCC OnLine SC 986**. Under the circumstances, this Court is of consideration to permit the complainant to produce the document as sought for. Hence, Point No.1 is answered in **Affirmative**.

8. Point No.2: In view of the reasons recorded on point No.1, this Court deems it fit to allow the present application. Hence, the following:

ORDER

Application filed by the complainant seeking production of additional document is hereby allowed.

Since the above application is filed at the stage of cross examination of PW1, the case is posted for same stage by: 26.12.2024.

Sd/-

**PrI. CIVIL JUDGE & JMFC.,
MUDIGERE.**