

**ORDER ON APPLICATION FILED BY THE
ACCUSED UNDER SECTION 311 OF CR.P.C AND
APPLICATION FILED U/SEC 254(1) OF CR.P.C.
AND SECTION 45 OF INDIAN EVIDENCE ACT.**

The accused filed application under section 311 of Cr.P.C. to recall DW-3 for further cross and to obtain the signatures of DW-3 for sending the Ex.D1 and 2 to the handwriting expert. The accused filed application under section 254(1) of Cr.P.C. R/w Section 45 of Indian Evidence Act for referring the Ex.D1 and D2 for handwriting expert.

2. On the other hand complainant has filed objection to the applications and pray to dismiss the applications.

3. Heard both side. Perused the materials on record.

4. In the application accused stated that, there is no transaction between the complainant and accused. The accused further contended that, he has received an amount of Rs.20,000/- from Sri. Mohan N.T., towards advance

amount for supply of labours to the estate of said Mohan N.T. Accused further stated that, for security of the amount paid by said Mohan N.T., accused has issued the cheque, which is marked as Ex.P1. Accused stated that he has issued the said cheque in favour of Mohan N.T. Accused further stated that, Mohan N.T. issued an affidavit on a stamp paper which is marked as Ex.D1. Hence accused has summoned the Mohan N.T. and examined as DW-3. But in the cross examine of DW-3 has denied the above transaction and also denied Ex.D1 and signatures on the said affidavit.

5. Accused further contended that, DW-3 has issued a notice to the accused through Sri. Bhoothana-theswara Swamy Temple, Valgerahalli, Vastare Hobli, Chikmagaluru and same is marked as Ex.D2, same is also denied by the DW-3. Hence, it is very much necessary to tally the signature

of DW-3 on Ex.D1 and 2 document and admitted signature of DW-3 in the deposition before the court. Hence, accused prays to allow the applications.

6. On the other hand complainant has filed objection to the applications by stating that, the present applications filed by the accused is nothing but tactic to unnecessarily prolong the proceedings and delay the final adjudication of the case. Complainant further stated that, the accused has relied upon Ex.D1 affidavit and Ex.D2 notice purportedly issued through Sri. Bhoothnatheswara Swamy Temple. The complainant has categorically denied the contents of the said documents as well as the claim that they were signed or sent by him. Complainant further stated that, he has never executed any such affidavit or issued any notice as alleged by the accused. Complainant stated that, the

accused has failed to establish prima-facie basis for sending the documents for expert verification. Complainant stated that the accused instead to providing his defense in a legitimate manner, is making frivolous attempts to re-call DW-3 under the guise of obtaining expert opinion on signatures, which is neither relevant nor necessary for the just decision of the case. Complainant stated that the application is filed with the sole intention of causing unnecessary delay, which would result in undue hardship and harassment to the complainant. In the objection he further stated that, he is not aware of the execution of agreement with the accused and DW-3. The accused has not taken any legal action against DW-3. Hence, complainant prays to dismiss the applications.

7. Heard arguments by both side, on the applications.

8. The following points arise for consideration of this court.

1. Whether the accused has made out sufficient grounds to allow the application filed under Sec 311 of and Sec 254(1) of Cr.P.C and 45 of Indian Evidence Act?

2. What Order?

9. My findings to the above points are as follows;

Point No.1: In the Negative

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

REASONS

10. Point No.1: The complainant has filed the private complaint against the accused for the offence punishable under section 138 of N.I Act. When the matter is posted for further evidence of accused, he filed the present applications for recall DW-3 for further cross examination and to obtain the signature of DW-3 for sending the Ex.D1 and Ex.D2 to the hand writing

expert. On the other hand the complainant opposed the application.

11. On the rival contention taken by the parties I have careful perusal of the record it reveals that the accused has taken specific defense that he has no transaction with the complainant but he has issued Ex.P1 cheque to N.T. Mohan. Accused stated that, the said N.T. Mohan is having the estate by name Byraveswara and the accused agreed to supply 15 labour to the said N.T. Mohan and received advance amount of Rs.50,000/- and at the time of receiving advance amount he has issued cheque for security purpose to said N.T. Mohan. It is the contention of the accused is that N.T. Mohan has filed the false case through the complainant. Accused contended that, hence, to prove the defense taken by the accused expert opinion is very much necessary.

12. In the present case the accused himself has admitted his signature in the cheque. The accused contended that there is no transaction between the accused and the complainant. The complainant has issued notice to the accused on 16/10/2017, but the accused has not issued any reply to the said notice. Now the accused contending that there is no transaction between complainant and accused and filed the application for referring the Ex.D1 and Ex.D2 for hand writing expert opinion.

13. The accused has to prove his defense independently. Accused prays to recall DW-3 for further cross examination and to obtain signature of DW-3 for sending the same for hand writing expert. But in the application accused has not made out any grounds for re-calling DW-3. In the earlier dated DW-3 has been examined and he has signed the deposition. The

signature of DW-3 very well available on record, hence question of recalling DW-3 to obtaining his signature does not arise. The court can compare the signatures of DW-3 with the signatures in Ex.D1 and 2, therefore it is not necessary to refer the Ex.D1 and Ex.D2 for expert opinion. The accused has taken the defense that there is no transaction between complainant and accused, but it is the duty of the complainant to prove his transaction with the accused. This case is filed by the complainant in the year 2017. If the application is allowed, it will further prolong the matter. Hence the question of sending the signature of DW-3 for expert opinion does not arise. Hence I answered point No.1 in the Negative.

14. **Point No.2:** For the reasons stated in Point No.1 I proceed to pass the following;

ORDER

The application filed by accused under Sec 311 of and Sec 254(1) of Cr.P.C and 45 of Indian Evidence Act is hereby dismissed.

Case posted for further evidence of accused if any.

Call on 06/03/2025

(JAYAPRAKASH V)
SENIOR CIVIL JUDGE AND JMFC.
MUDIGERE.