

ORDERS ON APPLICATION FILED UNDER
SECTION 94 of BNSS

The learned counsel for accused has filed this application with a prayer to allow the application and directed the Police Subinspector, Sagar Town PS to produce the complaint lodge against the Vishwam Finance and directed the District registrar Office, Vinoba Nagar 100 feet road, Narasimha Complex, 1st Floor Shivamooga, to produce the partnership deed dated:26.06.2023 regarding Vishwam Finance.

2. In the application the learned counsel for the accused has stated that, the complainant is one of the partners of Vishwam Finance, which has been carrying on finance business in Sagara Taluk, including lending money to the public and charging exorbitant interest. The firm used to obtain blank cheques from borrowers, and in cases where the husband borrowed money, blank cheques were obtained from both husband and wife. Even after

borrowers repaid the loan and interest, the partners of Vishwam Finance allegedly visited their houses, threatened the women members of the family, and intimidated them by stating that the blank cheques would be misused and cases would be filed before the courts. Further stated that the several members of the public have lodged complaints against Vishwam Finance before the Deputy Superintendent of Police, Sagar. Upon oral enquiry, it was informed that the complaints were forwarded to the Sagar Town Police Station for investigation. Therefore, it is prayed this court be pleased to direct the Police Sub-Inspector, Sagar, to produce copies of the said public complaints before the Court. Further stated that the complainant is one of the partners of Vishwam Finance, and to prove the same, relies on the partnership deed dated 26-06-2023, registered before the District Registrar Office, Vinoba Nagar, 100-Feet Cross Road. Hence, issue a direction to the aforesaid officer to produce the documents. Further stated that the partners of Vishwam Finance. Vishwam Finance claims to have advanced a loan to the accused's husband and has filed a cheque-dishonour case for an amount of Rs. 8,00,000/- before the Principal Civil Court, Sagar in Case No. 591/2025. At the time of granting the alleged loan, a blank cheque

belonging to the accused was obtained from her husband and the complainant has created false documents in support of the said case. These defence documents are essential for the accused to be placed before the court. If the present application is not allowed, the accused will suffer irreparable loss and hardship. On the other hand if this application is allowed, no hardship or prejudice would be case of to the complainant. Hence, she prays to allow the application.

3. The learned counsel for complainant has filed detail objection stating that, the application is not maintainable, and liable to be dismissed. The averments made in the application are frivolous, vexatious, and filed with malafide intention. The documents sought by the accused relating to "Vishwam Finance," its partnership details, and alleged public complaints are irrelevant to the present proceedings. This case pertains solely to an offence under Section 138 of the Negotiable Instruments Act concerning dishonour of cheque, and the documents requested have no bearing on the issues to be adjudicated. Summoning the documents sought by the accused will only cause undue delay in the trial. The documents do not directly relate to the defence of the accused, and calling for them at this stage is contrary to the legal process. The partnership deed or alleged public

complaint records do not clarify any aspect regarding the loan advanced to the accused or the issuance and dishonour of the cheque. The accused is attempting to divert the attention of the Court from the real issues in the case. The accused's claim of suffering prejudice if the documents are not produced is merely argumentative and unsupported by any evidence. The accused has filed this application solely to delay the trial. Hence, he prays to dismiss the application.

4. I have heard the arguments on both the sides and perused the material placed on record.

5. Upon hearing the arguments on both the sides, the following points arise for my consideration.

1. Whether the accused has made out sufficient grounds to allow the application filed under section 94 of BNSS for calling of the documents as mentioned in the application?

2. What order?

6. My finding on 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: The complainant has filed this case against the accused for the offence punishable under section 138 of N.I.Act. Now, the case is posted for defence evidence. In the meantime the present application filed by the counsel for accused with a prayer to directed to produce the above mentioned documents.

8. In the instant case, the accused has contending that the firm used to obtain blank cheques from borrowers, and in cases where the husband borrowed money, blank cheques were obtained from both husband and wife. Even after borrowers repaid the loan and interest, the partners of Vishwam Finance allegedly visited their houses, threatened the women members of the family, and intimidated them by stating that the blank cheques would be misused and cases would be filed before the courts. Further the several members of the public have lodged complaints against Vishwam Finance before the Deputy Superintendent of Police, Sagar. Upon oral enquiry, it was informed that the complaints were forwarded to the Sagar Town Police Station for investigation. Further the complainant is one of the partners of Vishwam Finance, and to prove the same, relies on the partnership deed dated 26-06-2023, registered before the District Registrar Office, Vinoba Nagar,

100-Foot Cross Road. Hence, issue a direction to produce the aforesaid documents. Further the partners of Vishwam Finance. Vishwam Finance claims to have advanced a loan to the accused's husband and has filed a cheque-dishonour case for an amount of Rs. 8,00,000/- before the Principal Civil Court, Sagar in Case No. 591/2025. At the time of granting the alleged loan, a blank cheque belonging to the accused was obtained from her husband and the complainant has created false documents in support of the said case. The document sought by the accused is public documents and hence, the accused has every way to obtain the said documents by way of filing application before the competent authority. But without exhausting the available remedy she has directly approached before the court seeking directed the aforesaid officers to produce the aforesaid documents, which is not at all tenable in the eye of law and the court cannot act as per her whims and fancies. The party who approached to the court has to produce the documents and to prove their case on their own leg and cannot take shelter on the weakness of the other side. Further the complainant has filed this case for recovery of debt due by the accused to the complainant and the production of the documents mentioned above is not at all related to the instant case. Further the

accused can produce the document, which is in her custody and to disprove the claim of the complainant stating that at the time of availing of loan amount her husband had issued the cheques. The accused always at liberty to prove her defence taken by her by producing the cogent documents in her custody.

9. The accused has contended that she has not issued any cheque regarding repayment of amount and her husband had issued the cheque at the time of availing the loan amount. It is settled position of law that who approached the Court must prove their case by leading cogent evidence. In the application the accused not stated and properly explained, what reasons this court directed them to produce the documents. Therefore, only on the basis of application this court not directed the any persons production of documents. Therefore, parties prove their case in leading evidence and documents. Hence, this Court is of the opines that the application filed by the counsel for accused is not maintainable. Thus in the above circumstances, this court opines that the discretionary power of the Court Under Section 94 of BNSS can not be invoked. On these grounds, the accused has failed to make out any grounds to allow the application. Accordingly, I answer the point No.1 in the Negative.

10. POINT No.2:- In view of my findings on Point No.1, I proceed to pass the following:

:ORDER:

The application filed by the counsel for accused under section 94 of BNSS is hereby rejected.

Facts and circumstances of the case there will be no order as to costs.

Hence case is posted for defence evidence Call On:

Sd/-

**Senior Civil Judge and JMFC.,
Channagiri.**