KADG320024692023

**IN THE COURT OF THE I ADDL. CIVIL JUDGE & J.M.F.C.
HARIHAR**

:**PRESENT**:

Sri. SHRINIVAS PATIL. B.A. LL.B. LL.M
I Addl. Civil Judge & JMFC.,
HARIHAR.

DATED THIS THE 13th DAY OF AUGUST 2026

C.C.1190/2023

COMPLAINANT: **Sri. B. Channabasappa.,**
S/o Late Amarvathi Bharamappa,
Aged about 62 years,
Businessman and Agriculturist,
R/o. Amaravathi,
Harihar.

(R/by **Sri.A.V.M., -** Adv.**)**

- V/s -

ACCUSED: **Sri. Vasantha Bhalchandra Phatak.,**
(Vasant B. Phatak),

S/o. Bhalchandra Phatak,
Aged about 67 years,
Industrialist,
R/o. “Deva”, Plot No.182,
“B” Block, Hanumant Nagar,
Hattikolla, Dharwad- 580003.

(R/by **Sri. M.B.R., -** Adv.,)

RANK OF THE PARTIES IN THE APPLICATION

APPLICANT (Complainant)	:	Sri. B. Channabasappa.,

- V/s -

OPPONENT (Accused)	**:**	Vasant B. Phatak.

O R D E R

This order addresses the application filed by the accused under Section 243(2) of Cr.P.C and U/Sec.45 of Indian Evidence Act.

2) In the application it is urged by the accused that complainant has filed the present case against the accused for the offence punishable U/Sec.138 of NI Act. Out of business transaction, Ex.P.1 was secured in bank as a security from the accused person by one Gajanan Hamsagar about 10 years back. The transaction was ended many years back. The complainant has misused the Ex.P.1 cheque. The accused denies the issuance of cheque to the complainant and writing on it. Comparing age of the cheque, age of the ink and age of the signature on the cheque goes to prove beyond doubt that Ex.P.1 was misused by the complainant. The bank account of the accused was also merged in SBI. Therefore, question of issuance of cheque by the accused to the complainant does not arise. Hence prayed to allow the application.

3) On the other hand the complainant has filed objections contending that the application is not maintainable both under law and on facts. If the cheque was given to Gajanan Hamsagar and the same was not returned, the accused ought to have taken action against him. Hence prayed to reject the application.

4) Heard the arguments and perused the records in detail. The counsel for accused has relied on (2014) 3 KCCR 2222, (2020) 1 AIR KAR 1, (2007) 2 SCC 258, (2008) AIR SC 2010. In view of the above the following points that arise for my consideration:

1. Whether the accused has made out sufficient grounds to allow the application ?

2. What order?

5) My answer to the aforementioned points are as under :

Point No.1 : In the **Nega*tive***

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

REASONS

6) **Point No.1:** The present case is filed by the complainant against the accused for the offence punishable under Section 138 of N.I. Act. The defence of the accused in the present case is that he had given Ex.P.1 as a blank signed cheque to Gajanan Hamsagar about 10 years ago. Therefore, the accused does not deny that the signature appearing on Ex.P.1 belongs to him. This case is that the cheque was signed by him but its other contents were filled up. Thus, the dispute raised by him is regarding age of the cheque, age of the signature, age of the ink, age of the writings.

The Hon'ble Supreme court of India in **K.Ramesh Vs. K. Kothandaraman reported in (2024) 12 SCC 82** has held as under.

> **"4.** In this regard our attention was drawn to paras 32, 33, 34 and 36 of the judgment in *Bir Singh* [*Bir Singh* v. *Mukesh Kumar*, (2019) 4 SCC 197 : (2019) 2 SCC (Civ) 309 : (2019) 2 SCC (Cri) 40 : (2019) 5 Comp Cas-OL 560] , wherein it has been

observed that even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment would attract the presumption under Section 139 of the Act and in the absence of any cogent evidence to show that the cheque was not issued in discharge of the debt, the presumption would hold good. The said paras are extracted below: (SCC pp. 208-209, paras 32-34 & 36)

"*32*. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

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36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

5. It is not in dispute that in the instant case, the accused has signed the cheque. The only dispute is with regard to the age of the ink used in making the signature on the cheque and the age of the signature and contents of the cheque.

6. We find that the application filed by the accused before the trial court was wholly frivolous and that the trial court had rightly rejected the said application. But in our view, the High Court ought not to have allowed the said application and thereby allowed the revision petition of the respondent-accused."

7) Further, the Hon'ble Supreme Court of India in **Oriental Bank of Commerce V/s Prabodh Kumar Tiwari reported in (2024) 12 SCC 165** has held that when the accused admits his signature, expert evidence regarding the person who filled the other particulars of the cheque is immaterial. The relevant paragraphs reads thus :

> "16. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a handwriting expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defence whether cheque was issued towards payment of a debt or in discharge of a liability."

8) The facts of the present case are also similar. Here also, the accused admits that he gave a signed cheque. His objection is that the remaining contents were filled later. Therefore, determination of age of the ink or the difference between the ink will not establish that there was no legally enforceable debt.

9) The accused counsel has relied upon the judgment of Hon'ble Supreme Court in **Kalyani Baskar Vs. M.S. Sampoornam, (2007) 2 SCC 258.** This case can be distinguished. In the said case, the genuineness of the signature itself was disputed. But the facts of the present case are different. Therefore, the decision in Kalyani Bhaskar does not apply to the present facts.

10) The accused counsel has also relied on **T.Nagappa Vs. Y.R. Muralidhar, (2008) 5 SCC 633.** However, the said case does not laid down that every application seeking determination of the age of the ink must be allowed. In the present case, the request is directly covered by the later decision in K.Ramesh Vs. K.Kothandaraman, where the signature was admitted and the dispute was regarding the age of the ink, signature and its contents. Therefore, the decision of the Hon'ble Supreme Court in K.Ramesh is more directly applicable.

11) The decisions in **N.Muniswamy Reddy Vs. N.Narayanaswamy (2014) 3 KCCR 2222 and Gavisiddeshwara Hiremat Vs. Sanjeev Basavarajappa Karadakal (2020) 1 AIR KAR 1,** were rendered in the facts of those case before the above decision of the Hon'ble Supreme Court in K.Ramesh. The decisions of the Hon'ble High Court are binding upon this court. However, when the Hon'ble Supreme court has subsequently considered identical request regarding the age of the ink and admitted signature, this court is required to apply the law declared by the Hon'ble Supreme Court.

12) In the present case, Ex.P.1 is returned by the bank with an endorsement invalid cheque. SBH has been merged to SBI, the cheque is not valid at present. Therefore, the determination of age of the ink or signature is not necessary to prove the reason for its return. Whether the return of the cheque as mentioned in Ex.P.2 satisfies the ingredients of Sec.138 of NI act is a separate issue. An expert opinion regarding the age of the ink will not help the court in deciding the legal effect of merger of the State Bank of Hyderabad with the State Bank of India. In view of the admitted signature, the nature of the defence and the law laid down by the Hon'ble Supreme Court in K.Ramesh V/s. K. Kothandaraman, sending Ex.P.1 to the forensic science laboratory for determining the age of the ink, signature and ink will not serve any useful purpose. Accordingly, Point No.1 is answered in the **Negative**.

13) **Point No.2**: In view of the foregoing observations and discussions, I proceed to pass the following :

ORDER

The application filed by the accused 243(2) of Cr.P.C and U/Sec.45 of Indian Evidence Act, are hereby dismissed.

No order as to costs.

For further complainant evidence if any 02.09.2026.

(Dictated to the Stenographer, directly over computer, typed by her, revised, corrected and then pronounced by me in the open Court on this the **13th day of August 2026)**.

SHRINIVAS C PATIL

Digitally signed by SHRINIVAS C PATIL
Date: 2026.08.13 06:43:15 +0530

(SHRINIVAS PATIL)
I Addl. Civil Judge & JMFC
Harihar