



IN THE COURT OF THE CIVIL JUDGE & JMFC, AT BYADGI.

Present: Sri. Suresh Wagganavar, MA. LL.B., (Spl)

Civil Judge & JMFC, Byadgi.

Dated this the 20th day of July-2024

C.C.No.92/2021

Smt.Farida Rajaksab Naddimulla.

**(By Sri.M.A.M., Advocate)
.... Complainant**

-VS-

Irayya S/o Channabasayya Hiremath.

**(By Sri.H.S.J., Advocate)
.... Accused**

ORDER ON APPLICATION U/Sec.91 of Cr.P.C

1. The counsel for accused has filed this application U/Sec.91 of Cr.PC, praying to issue summons to the Manager



H.D.F.C. Bank, Mandipete Davanagere, for production of bank account of accused in the interest of justice.

2. In the application, the counsel for accused has stated that, the accused is having account in Manager H.D.F.C. Bank, Mandipete Davanagere, the account of the accused was closed. Hence, on what reason the account of accused was closed and what date the account was closed is necessary to adjudicate the matter in dispute. Thus summoning the said Manager H.D.F.C. Bank, Mandipete Davanagere, to produce accused account documents is very much necessary. Hence, the application.

3. Per contra, the counsel for complainant has filed objection to the present application. The counsel for complainant has stated that the application filed by the accused is false, frivolous and vexatious and not maintainable either under law or on facts. In the application accused has sought for issue of



summons to call the manager of the HDFC Bank Branch Davanagere, to produce the Statement of Account simply the accused is going to postpone the case again he has sought by calling upon to produce the Account Extract the accused it is not required to call and produce by the Manager Bank Branch Davanagere. The Section 91 of Cr.PC, states that power to summon material witness, or examine person present not by summing any witness to produce any documents as sought by accused and further the application filed by the accused U/Sec.91 of Cr.PC, is to be rejected because the Manager who is not an important witness to examine on the fact and circumstances of the case. Hence, under these circumstances grounds this Hon'ble Court is please to reject the application filed by the accused U/Sec.91 of Cr.PC inview of not placing material before Court on which it could be no ground or its motion to allow the application. Hence, under these



circumstances and grounds no justification to allow the application filed by accused. Hence, prays to reject the application.

4. Heard arguments from both side. Perused the material on record. On the basis of the averments and on arguments of counsel, the following points that arise for my consideration: -

POINTS

- 1) Whether the accused has made out a case for allow the application U/Sec.91 of Cr.PC?
- 2) What order ?

5. My answer to the above points are as under:

- | | | |
|------------|---|---------------------------------------|
| Point No.1 | : | In the Negative and |
| Point No.2 | : | As per final order for the following: |

REASONS

6. **Point No.1**:- The the counsel for accused has stated that, on what reason and what date the account of the accused was closed is necessary to adjudicate the matter in dispute.



7. As per the Negotiable Instrument Act, even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption U/Sec. 139 of the Negotiable Instruments Act.

8. As per 138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment



for 8[a term which may be extended to two years’], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 9[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.



9. That on taking into consideration, the provision of presumption enumerated U/Sec.118, 119 and 120 of the NI Act, the defense of accused is not available to the accused. The Ex.P.1 was dishonoured by the banker of the accused on the ground of account closed. The accused himself must show the account of accused is continued at the time of presentation of Ex.P.1. But the accused ought to have approached the concern bank and filed application to take necessary documents. In spite of it without filing application before concern bank directly the accused has filed this application without any valid reason. Hence, the application filed by the accused is not maintainable. In the absence of any other relevant material, it appears to me that, the application filed by the accused is not maintainable in the eye of law. Accordingly, I answered the **Point No.1 in the Negative.**

10. Point No.2:- for the above said discussions, I proceed to

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pass the following:

ORDER

**The application U/Sec.91 of Cr.PC.,
filed by the accused is hereby rejected.**

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open court on this the **20th day of July, 2024**)

**(Suresh Wagganavar)
Civil Judge & JMFC,
Byadgi.**