

**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
KUSHALNAGAR
Present: Smt. Chaithra L B.B.M., L.L.B.,
Civil Judge & JMFC, KUSHALNAGAR.**

Dated this the 22nd day of April 2024

C.C. No. 1393/2019

Complainant : H.H Prajwal

(By Sri. HEP Advocate.)

-Vs-

Accused : H.H Prakash

(By Sri.KCS, Advocate.)

**ORDER ON APPLICATION FILED BY ACCUSED UNDER
SECTION 45 OF INDIAN EVIDENCE ACT**

1. This application is filed by the accused under Section 45 of the Indian Evidence Act, seeking to send the disputed cheque (Ex.P.1) along with the specimen handwriting of the accused to a handwriting expert, for the purpose of ascertaining whether the handwriting appearing on Ex.P.1 cheque is that of the accused. It is the contention of the applicant that, in the present case, the complainant has examined himself as P.W.1 and has been cross-examined by the accused. During such cross-examination, the complainant is stated to have deposed that the accused himself had filled up the cheque. It is further contended that, on a perusal of Ex.P.1 cheque, the contents of the cheque and the signature appear in different inks, which raises suspicion regarding its genuineness. According to the accused, this circumstance indicates

that the complainant's mother, Smt. Kalavathi, has misused a blank signed cheque allegedly retained by her and has instituted the present false case in the name of her son.

2. The accused has further taken a specific defence in his chief-examination that the handwriting and ink used for writing the name, amount in words, and amount in figures on Ex.P.1 differ from the ink used for the signature. Therefore, it is necessary to subject the cheque to scientific examination and to compare the handwriting on Ex.P.1 with the specimen handwriting of the accused. It is also the case of the accused that there was no transaction between himself and the complainant, and that he had not issued any cheque in favour of the complainant. He asserts that the cheque in question had been given in the year 2011 to the complainant's mother, Smt. Kalavathi, as a security in connection with a chit transaction. According to him, one Bhagya, introduced by the accused, defaulted in payment of the chit amount, and consequently, Smt. Kalavathi misused the said cheque by filling it up for an amount of her choice and presenting it through her son, the complainant.

3. The accused therefore submits that the complainant himself might have filled up the cheque and presented it to the bank. In these circumstances, it is contended that sending Ex.P.1 cheque along with the specimen handwriting of the accused to a handwriting expert is just and necessary for a proper adjudication of the case and to meet the ends of justice. It is further alleged that the complaint has been filed with an ulterior motive to make unlawful

gain. Hence, the accused prays for allowing the application. On the other hand, the complainant has filed objections contending that the application is not maintainable either in law or on facts and lacks merit. It is further contended that the application has been filed only with an intention to harass the complainant and to delay the proceedings, and therefore, it is liable to be dismissed.

4. The complainant has specifically denied the allegation that he stated in cross-examination that the accused himself filled up the cheque. It is submitted that the actual statement made during cross-examination dated 02.08.2024 is: “ಆರೋಪಿ ನಿಷಿ-1 ನ್ನು ಮೊದಲೇ ತುಂಬಿಸಿಕೊಂಡು ಬಂದು ನನ್ನ ಮುಂದೆ ಸಹಿ ಮಾಡಿ ಕೊಟ್ಟಿರುತ್ತಾರೆ,” which indicates that the cheque had already been filled up and was brought by the accused, who signed it in the presence of the complainant. Therefore, it is contended that the accused has misrepresented the evidence. In view of the above, the complainant submits that no valid grounds are made out by the accused to send Ex.P.1 for scientific examination, and hence, the application is liable to be rejected.

5. Heard both sides and perused the material on record.

6. The points that arises for my consideration are as follows.

1. Whether the application filed by the accused under section 45 of Indian Evidence Act deserves to be allowed?

2. What order?

7. My answers to above points are

Point No.1 : In the Negative,

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

REASONS

8. **Point No.1** : This application is filed by the accused under Section 45 of the Indian Evidence Act seeking to send Ex.P.1 cheque along with his specimen handwriting to a handwriting expert for comparison. The principal contention of the accused is that the contents of Ex.P.1 cheque are not in his handwriting and that the same has been misused. It is further contended that the complainant, during cross-examination, has admitted that the accused himself filled up the cheque. However, on careful and entire perusal of the cross-examination of P.W.1, this Court finds that no such statement has been made by the complainant. On the contrary, the complainant has consistently stated that the accused had brought the cheque already filled and thereafter signed the same in his presence. The relevant portion of the evidence recorded on 02/08/2024 at first page 9th line clearly indicates that the complainant has not stated that the accused himself filled up the cheque. Thus, the contention of the accused in this regard is factually incorrect and amounts to misreading of the evidence.

9. Further, It is well settled position of law that even if the contents of the cheque are filled up by a third party, the same would not invalidate the cheque, so long as the signature is admitted. Therefore, the question as to who filled up the contents of the cheque is not of such significance as to warrant sending the

document for expert opinion in the facts of the present case. Moreover, the defence taken by the accused that the cheque was issued as security in a chit transaction and has been misused is a matter to be established by leading evidence during trial. The opinion of a handwriting expert on the contents of the cheque would not, by itself, conclusively establish such a defence. Thus, the Court is of the opinion that no sufficient or justifiable grounds are made out by the accused to send Ex.P.1 cheque for handwriting expert opinion. The proposed examination is not necessary for proper adjudication of the case. **Therefore, this court answers point No.1 in the Negative.**

10. Point No.2 : In view of the discussion on Point No.1, this Court proceeds to pass the following:

ORDER

The application filed by the accused under Section 45 of the Indian Evidence Act is hereby **rejected**.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open court on this 22nd day of April 2026 .)

Sd/xxx

**Civil Judge and JMFC
Kushalagar.**