

**IN THE COURT OF THE II ADDL. CIVIL JUDGE
& JMFC., AT PANDAVAPURA**

DATED ON THIS THE 28th DAY OF NOVEMBER 2024

:PRESENT:

Smt. Padma.M, B.A, L.L.B.,
II Addl. Civil Judge & J.M.F.C.,
Pandavapura.

C.C.No.307/2022

Complainant : Sukanya
(By Sri.MSV, Adv.,)
v/s

Accused : Ravikumar
(By Sri.BB, Adv.,)

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

The learned counsel for accused has filed this application under section 45 of the Indian Evidence Act, for seeking to send the Ex.P1 cheque to FSL to ascertain the difference in signature and contents of the Ex.P1 cheque.

2. In the application, the accused submits that, the complainant has filed a private complaint against the accused u/s. 138 of Negotiable Instruments Act. Further the accused has taken defence that the alleged cheque Ex.P1 is tampered and materially altered by the complainant and

filed this false case. During the cross-examination, PW1/complainant himself admitted that, there is are different handwriting in signature and contents of Exp-1 of the accused and . In view of the conflicting statement of the complainant, therefore necessary to refer Ex.P1 cheque to FSL for ascertain the different handwriting in signature and contents of the Ex.P1 cheque. Ex.P1(a) signature is the accused, but the accused has not filled the cheque. Therefore the contents of cheque is filled by some other persons. Therefore there is a different handwriting in signature and contents of the Ex.P1, to ascertain the real facts. it is required to the expert opinion to If allowed the application, it will not caused to the complainant. Hence expert opinion is necessary to prove the defence taken by the accused. Hence, prayed to allow the application.

3. On the other hand the complainant has filed his objection and stated that, this application is not maintainable either in law or on facts. Further submits that, with an intention to cheat and defraud and for drag-on the proceedings, the complainant has filed this application. During the cross-examination, the complainant has admitted that different signature of the accused and other handwriting in the Ex.P1. This is not a necessary to expert opinion with regarding to the contents of the Ex.P1 cheque. The complainant himself admitted that, Ex.P1(a) is his signature and further he contended that, cheque contents written by the son-in-law of the complainant, at that time, the complainant has denied the said suggestions. In this regarding, the accused has sought for expert opinion is not required. Therefore the complainant prayed to dismiss the said application.

4. Heard both sides.

5. Point for consideration:

“Whether the accused has made out ground to allow this application?”

6. My answer to the above point is in the Negative, for the following:

R E A S O N S

7. I have gone through the complaint, application and objection, it is disclosed that the complainant has filed a private complaint against the accused under the alleged offense punishable u/s. 138 of N.I.Act. On perusal of the cross-examination of the PW1, it is disclosed that, “ ನಿಪಿ-1 ಚೆಕ್‌ನಲ್ಲಿರುವ ಸಹಿ ಮಾತ್ರ ಆರೋಪಿಯದಾಗಿದ್ದು, ಉಳಿದ ಎಲ್ಲಾ ಒಕ್ಕಣಿಕೆಗಳನ್ನು ನನ್ನ ಅಳಿಯ ವೆಂಕಟೇಶ ಬರೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿ ಮುಂದುವರಿದು ಆರೋಪಿ ಬರೆದಿರುತ್ತಾರೆ ಎಂದು ನುಡಿದರು. ಆರೋಪಿ ಚೆಕ್‌ನ್ನು ಮನೆಯಲ್ಲಿ ಬರೆದುಕೊಂಡು ಬಂದಿರುತ್ತಾರೆ. ನಾನು ಆರೋಪಿಯ ಬಳಿ ಚೆಕ್‌ನ್ನು ನನ್ನ ಮುಂದೆ ಬರೆಯಿರಿ ಎಂದು ಕೇಳಿರುವುದಿಲ್ಲ. ನಿಪಿ 1 ರಲ್ಲಿರುವ ಸಹಿ ಬೇರೊಂದು ಪೆನ್ನಿನಲ್ಲಿ ಬರೆದಿದ್ದು, ಚೆಕ್‌ನ ಒಕ್ಕಣಿಕೆಗಳನ್ನು ಬೇರೊಂದು ಪೆನ್ನಿನಲ್ಲಿ ಬರೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ” These evidence clearly disclosed that, the learned counsel for accused clearly admitted that, accused signature in Ex.P1 cheque , but they are taken serious defence that the contents of the Ex.P1 cheque not written by the accused. Said contents written by the son-in-law of the complainant. In order to prove of the contents Exp-1 cheque filed this application.

8. As per provision of Sec.138 of NI Act, issuing cheque is very important. In this case, the accused has not disputed with regarding to the signature of the accused but he has disputed that, contents of the cheque has not written by the accused. in this regard, I have relied on decision in:

A.I.R. 2000, Karnataka, page-169 (H.Marigouda Vs. Tippamma & Others) which is as follows:

“As per Sec.20 of N.I.Act, even if a blank cheque is given, the holder has authority to make or complete the instrument as a negotiable one. It means the accused has impliedly given permission to the holder of the cheque to fill up blanks in the cheque. Once all these things are established, Sec.139 of N.I.Act states that the cheque has been issued for the discharge of debt or liability unless the contrary is proved.”

9. Therefore, after going through the above said ruling of our Hon'ble High Court of Karnataka, it is very clear that, as per Section 20 of the N.I.Act, even if the blank Cheque is given, the holder of the Cheque has authority to complete the instrument as negotiable one. The duty of the accused to fill the cheque and issuing the cheque to other persons. Case on hand, the accused himself admitted that the signature of the accused, but contents of the cheque, he has not written. The duty of the accused to fill the cheque and issued, but in this case, he has taken defence that, he has not filled the cheque. On this ground not required to sent the cheque to the expert opinion. Therefore, all the above said reasons the learned counsel for the accused has not made out any grounds to allow the application. **Hence, I have answered point No.1 in the Negative.**

10. Point No.2: In view of the above discussions, I proceed to pass the following:

ORDER

**Application filed by accused under
Section 45 of the Indian Evidence Act, is
hereby dismissed.**

(Dictated to the Stenographer, transcribed and computerized by her,
corrected, then pronounced by me in the Open Court on this the 28th day of
November 2024)

**(PADMA.M)
II Addl. Civil Judge & JMFC.,
Pandavapura.**

Orders pronounced in the open court vide
separate orders

ORDER

Application filed by accused under
Section 45 of the Indian Evidence Act, is
hereby dismissed.

II ACJ & JMFC.,
Pandavapura.