ORDERS ON APPLICATION FILED BY THE ACCUSED UNDER SECTION 91 OF THE CODE OF CRIMINAL PROCEDURE

The counsel for accused has filed application under Section 91 of the Code of Criminal Procedure seeking to direct the complainant to produce the documents shown in the application.

2. In the application, it is stated that the complainant has filed the above case against the accused for the offence punishable under Section 138 of N.I. Act. It is further stated that the accused had executed one on demand pronote, agreement deed and Aadhara patra dated 23.08.2021, toward alleged loan transaction in favour of the complainant. The complainant has not produced those documents during his evidence and those documents are very much necessary and relevant in adjudication of the matter. The complainant intentionally has not produced those documents before the Court. Further those documents are very much required to the accused to cross examine the complainant. For all these reasons he prayed to allow the application.

3. The complainant has opposed the application filed under section 91 of the Code of Criminal Procedure contending that the application filed by the accused is neither maintainable under law nor on facts and hence same is liable to be rejected.

It is further submitted that now the case stand posted for cross of PW-1, at this stage the accused has filed the present application only with an intention to protract the proceedings. The complainant examined himself as PW-1 and relevant documents were also marked on behalf of the complainant. It is further submitted that the complainant is not obliged to provide any documents as per the application filed by the accused. It is further stated that the documents such as on demand pronote, agreement deed and Aadhara patra dated 23.08.2021 sought by the accused are not in his possession. For all these reasons, he prayed to reject the application filed by the accused.

4. Heard both the counsel. Perused entire materials on record.

5. The following points that would arise for my consideration:

1. Whether accused has made out sufficient grounds to allow application filed under Section 91 of the Code of Criminal Procedure ?

2. What order?

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

Point no-1	:	***In the Negative***
Point no-2	:	As per final order, for the following:

<u>R E A S O N S</u>

7. **<u>Points No-1:</u>** The complainant has filed the above complaint against the accused for the offence punishable under Section 138 N.I.Act. After registering the above case, summons

was issued to accused and he appeared through his counsel and got released on bail and later his plea was recorded. Thereafter, when the above matter was posted for cross examination of PW-1, the accused has moved an instant application seeking to direct the complainant to produce the documents such as on demand pronote, agreement deed and Aadhara patra dated 23.08.2021 executed infavour of the complainant toward alleged loan transaction. It is pertinent to mention here that the complainant has specifically denied the execution of such documents by the accused in his favour and stated that he is not in possession/custody of such documents. When the complainant has denied such execution and possession/custody of those documents, the question of directing the complainant to produce those documents do not arise at all. Further, it is pertinent to mention here that on careful perusal of reply notice dated 06.01.2023 issued by the accused to the legal notice issued by the complainant it reveals that no where in the said reply notice he has taken a contention as to execution of such documents in favour of complainant. In the said reply notice he has specifically denied the loan transaction and taken a contention that the complainant might have take away the signed cheque kept in his house for paying the amount towards purchasing cement or iron for his personal use and thereby denied the loan transaction. When the accused himself had denied the loan transaction with complainant the question of executing those alleged documents infavour of complainant do not arise at all. Further, it is pertinent to mention here that if he had executed any such documents infavour of complainant and handed over the original of them to the complainant, certainly he would have retain the copy of those documents and he could have produced copy of those documents along with his application. However, the accused has not produced any copy of those documents along with his present application. Further, it is pertinent to mention here that the proceedings under Section 138 of NI Act is summary in nature and the trial adopted to the said proceedings is summons trial and not warrant trial. Further a perusal of record, particularly reply notice issued by the accused, it reveals that the accused has not denied the Ex.C1 cheque belonged to his account and he even has not specifically denied the signature found in the Ex.C1 cheque. Once it is admitted that cheque belongs to his account, the presumption under Section 139 and 118 of the NI Act raises in favour of the complainant and it shall be presumed that the accused has issued the said cheque for discharge in whole or in part of his any debt or other liability. In the present case, the accused has not denied that Ex.C1 cheque belonged to his account and his signature found thereon. It is settled law and in catena of judgments, the Hon'ble Apex Court and Hon'ble High Courts were held that in respect of the proceedings instituted for the offence punishable under section 138 of the N.I, Act, it is only mandate that cheque in question should be belonged to the account of the accused and signature found in the said cheque ought to be in the hand writing of the accused. Thus, once it is admitted or proved that cheque belonged to the account of the accused and signature found in the said cheque belonged to the accused, the statutory presumption as per section 139 of N.I. Act comes into play in favour of complainant. Hence, the said presumption which raises in favour of the complainant cannot be rebutted by mere producing alleged loan documents sought by the accused. The said documents sought by the accused are only a collateral/supportive documents and not the main documents like Ex.C1 cheque. Thus, the alleged loan documents sought by the accused would be immaterial in determining the purpose for which the cheque was handed over to the complainant. Hence, no purpose would be served by allowing the application filed by the accused. Further, as we discussed supra, when the accused himself had denied the loan transaction with complainant the question of executing those alleged documents infavour of complainant do not arise at all. On perusal of record it reveals that when the above matter was posted for cross of PW-1, the accused instead of cross examining the complainant has moved an instant application seeking to direct the complainant to produce the documents which are not material without assigning any valid reasons. All these aspects clearly reveal that the accused has filed the present application only with an intention to drag the proceedings. For all these reasons, this Court is of the opinion that the accused has not made out sufficient grounds to allow the present application and the application filed by the accused has to rejected with cost for causing delay in the proceedings. With these observations, I answer point no.1 in the ***Negative***.

8. **Point No-2:** In view of my aforesaid reasons, I proceed to pass the following:

O R D E R

The application filed by the accused under Section 91 of the Code of Criminal Procedure is hereby rejected with cost of Rs.400/-.

(Dictated to the Stenographer, transcribed by her on Computer, same is corrected and then pronounced by me in the open court on this the **25th day of April 2026**)

Prl. Civil Judge & JMFC,
H.D.Kote.