

**ORDERS ON APPLICATION FILED U/S 45 OF**  
**Cr.P.C.**

The learned counsel for the accused after completion of the evidence of both the parties, has filed this application under Section 45 of Indian Evidence Act, seeking sending the writings on the cheque to the Handwriting Expert along with the vakalath and Deposition of the accused for examination in order to find out the truth in the case.

2. This application is objected by the Learned counsel for the complainant by filing his objections. In the objection statement the complainant taken contention that, the application made by the accused is not maintainable. Further, he taken contention that the bank endorsement has disclosed that, the cheque was returned unpaid for the reason payment stopped by the drawer but not differ the signature of the accused in the cheque. Therefore, he prays for reject the application filed by the accused.

3. Heard and perused the records.

4. The complainant has filed this complaint under Section 200 of Cr.P.C. against the accused alleging that

the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act.

5. According to complainant, the complainant and the accused were known to each other and due to the said acquaintance, in the month of June 2020 the accused met the complainant and sought for financial help. On 07.11.2020 the complainant lent Rs.8,75,000/- to the accused for discharging his financial difficulties and also for the purpose of the construction of the house. In this regard, the accused has issued a cheque bearing No.011488 dated 27.10.2021 by signing it and asked the complainant to present the same to the bank for encashment after one year.

6. On 27.10.2021 when the complainant presented the cheque before the bank for encashment, the said cheque was returned with an endorsement that 'Payment stopped by the Drawer'. Thereafter the complainant intimated the same to the accused. Thereafter, the complainant came to know that, with an intention to cheat her, the accused has stopped the payment by giving instructions to the bank authorities. Hence, she has issued a legal notice on 15.11.2021 to the two addresses of the accused. On 24.11.2021 the accused has issued a reply notice to the said notice. Thereafter the complainant has filed this complaint.

7. After service of summons, the accused appeared before the court and contested the case by taking defences which are mentioned in his reply. Thereafter both the parties have led their evidences and now the counsel for the accused has filed this application on the ground that, the signature and the writings on the cheque are not belongs to the accused. Hence the same may be sent to handwriting expert for ascertaining that whether the signatures found on the cheque is belongs to the accused or not.

8. On perusal of the record, the accused did not disputed that, the cheque in question does not belongs to him. Wherein, the accused denied the signature found in the cheque in question. As per Ex.P9 reply notice which issued by the accused to the statutory notice sent by complainant herein wherein the accused clearly stated that, there is no monitory transaction between himself and complainant. Further, he stated that his blank singed cheque book has been misplaced and the complainant and brother of accused are hands in gloves in getting filled the cheque in question forging the signature of the accused. Further, in the deposition he has clearly deposed that, the signature found on the cheque does not belongs to him. In the cross examination the complainant counsel suggested that,

the signature appear on Ex.P1 and appear on Vakalathnama are one and the same, but the DW-1 categorically denied the same. The next question put-forth by counsel for complainant to the accused DW-1 is that, "ಸದರಿ ಸಹಿಗಳನ್ನು ಬರಹ ತಜ್ಞರಿಗೆ ಪರೀಕ್ಷೆಗೆ ಕಳುಹಿಸಿಕೊಟ್ಟು ರುಜುವಾತು ಪಡಿಸಲು ನನಗೇನು ತೊಂದರೆ ಇರುವುದಿಲ್ಲ". Therefore, the complainant himself suggested that, he has no objection to send the disputed and admitted signature of the accused to handwriting expert opinion.

9. It is well settled that, the case of cheque bouncing with regard to Section 138 of N.I.Act stands on different footing than other criminal cases. The fundamental principle of criminal jurisprudence is that, an accused is presumed to be innocent and the burden of proof lies on the prosecution to prove the guilty of the accused beyond reasonable doubt. However, in a case under Section 138 of N.I.Act there is a presumption drawn by virtue of Section 118(a) and 138 of N.I. Act in favour of the complainant that, cheque has been issued towards settlement and discharge of a legal enforceable debt vowed by the accused to such complainant only. It is for the accused to rebut the such presumption drawn against the accused under Section 118 and 138 of N.I.Act and prove his innocence in accordance with the

law before the court by adducing oral and documentary evidence to support his defence that, no such legally enforceable debt ever existed in favour of complainant and complainant has misused the cheque to wrongfully extract money from him.

10. In this case on hand, the accused has categorically denied the signature appeared on the cheque in question. Further, the complainant has suggested to the DW-1 in the cross examination she has no objection to send the disputed and admitted signature for comparison to the handwriting expert. Therefore, in order to disprove the case of the complainant, the accused has sought for a direction to obtain opinion of the handwriting expert. After comparing the admitted signature of the accused and signature as appearing on disputed cheque. No doubt the cheque was dishonoured for the reason payment stopped by drawer. But, the cheque was not unpaid for the reason signature differs. The complainant has not produced the certified copies of the specimen signature of the accused from obtaining the bank. Even, the complainant has not seeking direction to produced specimen of the accused from the bank. In the absence of such materials, this court cannot possible adjudicated the dispute. Therefore, this court is of the opinion that,

issue of direction to obtain the opinion of the handwriting expert comparing the admitted signature of the accused and signature as appearing on the disputed cheque. If the application is allowed, no harm caused to the complainant. Therefore, this court proceed to pass the following:

**ORDER**

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

*The both parties are directed to furnish the name and address of the Truth-labs.*

*Call on 12.03.2024.*

**Senior Civil Judge & JMFC,  
K.R.Nagara.**