



IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT K.R.NAGAR

PRESENT: **Sri. Aravindra B.C., B.A., L.L.B.,**
 Senior Civil Judge & JMFC,
 K.R.Nagar.

Dated this the 20th day of December, 2024

C.C. No.282/2021

Sri. S.L.Gowdappa,
S/o Late S.J.Lingegowda,
Aged about 65 years,
R/at: Srirampura village,
Chunchankatte Hobli,
K.R.Nagar Taluk.

.....Complainant

(By Sri. C.K.N., Advocate)

-Versus-

Sri. C.R.Mohankumar,
S/o Late C.K.Rajanna,
Aged about 30 years,
R/at: Chikkakopple village,
(Vaddarakopple),
Chunchankatte Hobli,
K.R.Nagar Taluk.

.....Accused

(By Sri. B.K.N., Adv.)



Parties to Application

Applicant : Sri. C.R.Mohankumar

..... Accused

-V/s-

Opponent : Sri. S.L.Gowdappa

..... Complainant

Provision under which the application is filed	Under Section 45 of the Indian Evidence Act
Relief Sought For	Seeking sending the writings on the cheque to the Handwriting Expert to give opinion
The date on which the application is filed	15.07.2024
Number of the application	01
The date on which the objections are filed by the different opponents	19.07.2024
The date on which the orders were passed on the said application	20.12.2024

ORDERS ON APPLICATION

The accused has filed application under Section 45 of Indian Evidence Act, seeking sending the writings on



the cheque along with the 313 statement of the accused to the Handwriting Expert.

2. In the application the accused has stated that, the accused has denied the signature found on the cheque. The complainant and bank officials have colluded with each other and given endorsement for 'funds insufficient' instead of 'signature differs'. If the application is allowed, no harm will be caused to the other side. Therefore, he prays for allow the application.

3. On the other hand, the Learned counsel for the complainant filed objection. 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 'Funds Insufficient' but, not differ the signature of



the accused in the cheque. Therefore, he prays for reject the application filed by the accused.

4. Heard and perused the records.

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

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

2. What order?

6. My findings on the above points are as follows:

Point No. 1 : In the Affirmative

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

REASONS

7. **Point No.1:-** The complainant has filed this complaint under Section 200 of Cr.P.C. against the accused for the offences punishable under Section 138 of Negotiable Instrument Act.



8. According to complainant, the complainant and the accused were known to each other and due to the said acquaintance, on 13.10.2020 the accused met the complainant and sought for financial help. On the same day, the complainant lent Rs.4,25,000/- to the accused for discharging his financial difficulties. In this regard, the accused has issued a cheque in question by signing it and asked the complainant to present the same to the bank for encashment.

9. On 04.08.2021 when the complainant presented the cheque before the bank for encashment, the said cheque was returned with an endorsement that 'Funds Insufficient'. Thereafter the complainant intimated the same to the accused. Thereafter, the complainant came to know that, with an intention to cheat him, the accused has not maintained sufficient fund in his account. Hence, he has issued a legal notice on 18.08.2021 to the address of the



accused. In spite of service of notice, the accused has not issued any reply notice. Thereafter the complainant has filed this complaint.

10. After service of summons, the accused appeared before the court and contested the case by taking defence that, the accused not issued any cheque to the complainant and signature found in the alleged cheque is not belongs to him and the same has been created by the complainant. 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.



11. 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 defence of the accused is that, there is no monitory transaction between himself and complainant. Further, he stated that the complainant taken cheque from the house of the accused and the same has been misplaced and 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.

12. Further important aspect is to be noted that, the bank manager has been examined before this court and he deposed that, he did not verify the specimen signature of the accused before giving endorsement to complainant. He deposed that after presenting the said cheque, he perused the account of the accused wherein, there is no funds in the



account of the accused. Therefore, the cheque was dishonoured for 'funds insufficient'. But, he clearly deposed that he did not verify the specimen signature of the accused. Further, he has produced the copy of the specimen signature of the accused which marked at Ex.D3.

13. 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.

14. 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, he 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 'funds insufficient'. But, the cheque was not unpaid for the reason 'signature differs'. Whereas, the bank manager deposed that, he did not verify the specimen signature at the time of presenting the cheque. 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 will be caused to the complainant. **Accordingly, this court is answered point No.1 in the Affirmative.**

15. **Point No.2:** In view of the discussions and conclusion arrived at Point No.1, this court pass the following;

ORDER

The application filed by
the accused under Section 45



of the Indian Evidence Act, is
allowed.

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

*[Dictated to the Stenographer directly on computer, corrected and
then pronounced by me in the Open Court on this the **20th day of
December, 2024]***

**(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC,
K.R.NAGAR.**