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**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
ANKOLA AT ANKOLA, UTTARA KANNADA**

Dated this the 10th day of April, 2024

Presided Over by:

Sri. MANOHARA M.

LL.M.

Sr. Civil Judge and JMFC, Ankola

CRIMINAL CASE No.254/2018

COMPLAINANT: Mohini Jayawant Naik

V/s

ACCUSED: Kishore P Mane

O R D E R

The accused filed this application under Section 45 of Indian Evidence Act to send the Ex.P.1 cheque to forensic lab (FSL).

2. The brief case of the complainant is that:-

In the said application, it is stated that the accused denied that the transaction of Rs.9,00,000/- with complainant and also the issuance of Ex.C.1-cheque to the complainant and the cheque is not pertaining to him.

He denied the issuance of the cheque and the signature on the cheque, date, name and amount in words and figures in the Ex.C.1 and also the cheque is not pertaining to him. But the complainant intentionally not lead the evidence of the PW2 and PW3 who have been shown as witnesses in her complaint, and hence, the Ex.C.1 cheque should be sent to the forensic lab (FSL) by obtaining the hand writing of the accused and the complainant in a white paper by writing date, name, amounts and his signature. The accused is ready and willing to pay the proper fee and charges for sending cheque to forensic lab(FSL) Hence, it is prayed to pass an order to send Ex.C.1 cheque for forensic lab (FSL).

3. The learned counsel for complainant filed objection stating that it is not stated in the evidence led by the complainant that the accused himself has written the cheque in question. The accused with a fraudulent intention might have got written the contents of the cheque in question and hence unless it is specifically stated that the cheque in question was written by a specific person, then only the contents of cheque can be subjected to verify whether cheque was written by that person or not. It is pertinent to note that only the writings and contents of a document can be subjected to the opinion of handwriting expert when there available which is very proximate to the writing in question and the same is admitted by the person seeking the expert opinion. According to the

provisions of the N.I.Act, when the banker issues an endorsement with respect to the dishonour of cheque, the contents of said endorsement are to be taken as true and is for the other party to disprove the same by calling the competent person of the bank. As the proceedings of this case has been conducted as per the provisions earmarked for trial of summary cases, there is not any scope for allowing the instant application unless the instant case is converted into summons triable or warrant triable case. Hence, it is prayed to dismiss the application.

4. Having heard both side and having perused the plaint, application, objection and other materials following points arise for consideration.

1. Whether the accused made out grounds to send the Ex.P.1 cheque to forensic lab (FSL) to obtain opinion on handwriting of signature and other contents of Ex.P.1-cheque as prayed for?

2. What order?

5. My findings on the above points are:-

Point No.1:- In the negative

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

REASONS

6. **POINT NO.1**:- Admittedly, this complaint is filed by complainant against accused under Section 200 Cr.P.C

for the offence punishable under Section 138 of NI Act before learned Civil Judge and J.M.F.C., Ankola. Thereafter, the sworn statement was recorded, and the case was registered as a criminal case against accused, and summons was issued against the accused. Thereafter, the P.W.1 was fully cross-examined. When the case was set down for defence evidence, the accused has come up with this application. In this application, it is his contention that the cheque is not belonged to his and the handwriting of signature, date, name and amount in the cheque are also not his signatures, and hence, the expert opinion is required. It is also the contention of the accused that though in complaint two witnesses are shown, they have not been examined. Admittedly, the non-examination of the witnesses of complainant does not give an opportunity of seeking expert opinion on handwritings signature and other contents of Ex.P.1-cheque. The Ex.P.2 is the endorsement issued by UCO Bank stating that the said Ex.P.1 cheque was returned for funds insufficient. It does not say that the said cheque was returned for non-tallying of the signature. Admittedly, the burden is on the accused to prove that the said cheque was not belonged to him. As observed above, he has not exercise his opportunity of adducing defence evidence, though the case was set down for his defence evidence. Moreover, the accused can also prove by other evidence that the cheque is not belonged to him, if really, the cheque is not belonged to him. But he filed this application without exercising

such said opportunity. On the other hand, if it is necessitated expert opinion to come to correct conclusion, then only the question of seeking expert opinion as prayed arises. But this application is now pre-matured. Consequently, I answer point No.1 in the negative.

7. **POINT NO.2:-** In the result, I proceed to pass the following:-

ORDER

The application filed under Section 45 of Indian Evidence Act by accused is hereby dismissed keeping liberty to file fresh application if the circumstance necessitated as observed in the body of order.

(Dictated to stenographer, transcribed by him, revised by me and then pronounced in open court on this the 10th day of April 2024)

(MANOHARA M.)

Sr.Civil Judge & JMFC., Ankola