

KAUK720002292023



**IN THE COURT OF THE SENIOR CIVIL JUDGE & PRL. JMFC.,
KUMTA, AT: KUMTA, UTTARA KANNADA**

Dated this the 24th day of April 2025

PRESENT

**Smt.B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta**

C.C.No.34/2023

Complainant: Sri. Nagaraja Panduranga Naik,
Age: 37 years, Occ: Privet work,
R/o. Parijatha Nilaya,
3rd cross road,Upparakeri,
Kumta, Tq:Kumta.

(By Sri. N.M.N.- Advocate)

V/s

Accused: Smt. Surekha Babu Gungi,
Age: 52 year, Occ: Court work,
R/o. J.M.F.C Court, Tq: Honnavar.

(By Sri. S.U.A. - Advocate)

COMMON ORDER

Present application filed by the complainant Under section
311 of Cr.P.C to reopen the case and also filed application under

section 91 of Cr.P.C to call for the specimen signature of accused from SBI, Kumta Branch.

2. In his application the complainant has contended that, in the present case, the accused in her reply notice has stated that, the signature in cheque not belongs to her, and the same has been suggested to the complainant during his cross examination by the counsel for accused, hence in this case proving of signature of accused on the cheque is very much necessary hence it need the specimen signature of the accused, the accused holding her bank account at State Bank of India, at Kumta Branch. The accused denied her signature in the cheque hence it is necessary to call for the document that is specimen signature of the accused from concern bank, if the application is allowed no hardship caused to the accused, hence complainant prays to allow the application and direct the bank manager SBI, Kumta to produce the specimen signature of accused. to prove that the signature in the cheque is belongs to the accused,

3. This application is opposed by accused by filing his written objection contending that said application is not tenable

under law, it is liable to be dismissed. The accused filed complainant with respect to missing of her cheque in the year of 2011 itself, after receiving the notice from the Complainant again she lodged the complaint, hence the burden is on the complainant has to prove that he has a capacity to give the amount, and prove the alleged transaction beyond reasonable doubt, but he cannot file such type of applications.

4. After missing of cheque the, the accused closed her SBI bank account, the complainant failed to prove the transaction, and filed this false application. Already the accused counsel submitted his argument and furnished the citations, hence these applications are filed only to drag the matter. From the starting itself the accused denied the signature on cheque, and already cross examined the complainant, accused in her reply notice, evidence and in her cross examination denied her signature in cheque, hence now this application is filed only to harass the accused and drag on the matter. On these grounds the accused prays to reject the application.

5. Heard both learned counsel for complainant and accused.

6. Upon hearing arguments and on perusal of materials placed on records, following points arises for consideration.

1. Whether the complainant has made out grounds for allowing the applications?

2. What order?

7. 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

8 **Point No.1**: Admittedly now the present case is posted for arguments, at this stage complainant filed present applications to reopen the case and call for documents from State Bank of India, Kumta Branch.

9. Admittedly, in this case already both parties have lead their evidence, but now the complainant filed this application to call for document from SBI, Kumta Branch. It is the contention of the complainant that, the accused denying her signature in

cheque, hence to discharge their burden that the accused issued cheque for repayment of loan amount, and it is also necessary to prove the signature of accused thereon. Hence the specimen signature of the accused is necessary.

10. In cheque bounce cases the core point to prove is whether the cheque was issued for a legally enforceable debt or liability. The complainant must initially establish that the cheque was issued and subsequently dishonored. In the present case the accused denied her signature in the cheque, hence it is the contention of complainant that the burden is on the complainant to prove the signature of accused, hence the bank document that specimen signature of accused is very much necessary. Hence if the documents are called for it might assist the court in ascertaining the truth, Hence, if the opportunity is given to the complainant to prove their case by calling the document from the bank, no hardship will be caused to the accused, on the other other hand if the application is not allowed hardship caused to the complainant. Accordingly, point No.1 answered in the Affirmative.

11. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

Applications filed by the complainant Under Section 311 and under section 91 of Cr.P.C. is hereby allowed on cost of Rs.200/-.

Office to issue summons to Branch Manager, State Bank Of India, Kumta Branch, to produce the specimen signature of Smt. Surekha Babu Gunagi if P.F. paid.

(Typed by me and then pronounced by me in the open Court on this the 24th day of April, 2025)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta.