

KAUK720004752023



**In the Court of the Senior Civil Judge & Prl. JMFC, Kumta,
At Kumta, Uttara Kannada**

Dated this the 8th day of April, 2024

PRESENT

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

C.C.No.153/2023

Complainant: Vyavasaya Seva Sahakari Sangh
Niyamit, Kumta,
Represented by Incharge Manager
Sri. Nagendra Krishna Patgar
Aged about 48 years,
R/o. Kumta, Kumta Taluk.
(By Sri. P.G.H., advocate)

V/s

Accused: Manjunath Jatti Patgar
Major, Occ: Business,
R/o Winfinith Swadeshi Bhandar
Building No.359, In front of Bank of Baroda
Bajar road, Honavar 581 334.

(By Sri. N.M.N., advocate)

Orders on application dated 05.01.2024 filed by the accused under Section 311 of Cr.P.C.

When the matter was in the stage of further cross-examination of PW1, the accused has filed this application to direct the complainant to produce the documents described in this application. On 05.02.2024, the complainant has opposed this application by filing its written objections.

2. Accused has contended that in the cross-examination of PW1, he has deposed that several documents are with the complainant and the said documents are very material to prove his innocence. Hence, the accused is constrained to file this application.

3. On the other hand, the complainant has contended that this application is neither maintainable under law nor on merits of the case, at this stage, this application, which is filed under Section 311 of Cr.P.C. is not maintainable and the accused is the guarantor of the loan borrowed by one Sri. Manjunath Hanmant Naik. When the borrower was in default, officials of the complainant requested the borrower as well as her guarantors to repay the said loan and the accused being

one of the guarantors issued the cheque in question towards the discharge of his liability. Documents sought to be produced are not necessary in this case as they are no way concerned to this case and the said documents are regarding the misappropriation done by the accused in the complainant society. Hence, prayed for rejection of this application.

4. I have heard the arguments addressed by the learned advocates for complainant and the accused.

5. Following points arise for my consideration.

1. Whether the accused has made out a sufficient ground to direct the complainant to produce the documents described in this application?

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**: Complainant has filed this complaint against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

8. Learned advocate for accused has vehemently argued that in order to prove that there was no legally recoverable debt, the documents sought to be produced are very essential. On the other hand, the learned advocate for complainant has argued with same vehemence that the accused ought to have filed this application under Section 91 of Cr.P.C. instead of Section 311 of Cr.P.C., and the documents sought to be produced are not pertaining to the loan in question. Accused being one of the guarantors of the loan in question issued the cheque towards the discharge of his liability. Accused, who held a responsible post in the complainant society committed misappropriation and fraud. Business of the complainant is not in dispute, accused ought to have obtained the said documents from the concerned authority and the proceedings initiated against the accused under Section 64(1) of the Karnataka Co-operative Societies Act is in respect of the misappropriation done by him and not in respect of the loan in question.

9. On the other hand, the learned advocate for accused has further argued that he filed applications to the Assistant

Registrar of Co-operative Societies, Kumta under RTI Act for furnishing the documents and said Assistant Registrar gave endorsements that as per Section 8(1)(h) of the Right to Information Act, copies of the said documents cannot be furnished to him. In order to prove the aforesaid arguments addressed by the learned advocate for accused he has produced the copies of applications, counterfoil of postal orders, postal receipts, postal acknowledgments and the endorsements given by the aforesaid Assistant Registrar in C.C.No.62/2023.

10. Three more similar complaints are registered against the accused by the complainant before this Court in C.C.Nos.62/2023, 122/2023 and 126/2023 and the said three criminal cases are also posted today for orders on similar applications. That the case of the accused is of total denial in all the cases. According to the complainant in all the four cases the accused is the guarantor, loan amount is Rs.19,00,000/- to Rs.19,50,000/-, purpose of loan is to purchase property and about two and half months prior to the

sanction of alleged loan, borrower executed registered deed of simple mortgage in favour of the complainant.

11. In the complaint of all the four cases, the purpose of loan is not stated. Till today in all the four cases the complainant has not produced any documents regarding the properties to be purchased by the borrowers as stated in the loan applications. It is not the case of the complainant that the documents sought to be produced are not in its custody.

12. That on perusal of the entire materials on record, at this stage, I am of the opinion that the documents sought to be produced are essential for the just decision of the case and to give fair trial to the accused. Under these circumstances, I am of the opinion that the accused has made out a sufficient ground to direct the complainant to produce the documents described in this application. Accordingly, I answered Point No.1 in the Affirmative.

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

ORDER

Application filed by the accused under Section 311 of Cr.P.C. is hereby allowed. Complainant is hereby directed to produce the documents described in this application by 20.04.2024.

(Dictated to the stenographer, transcribed by her, then corrected and pronounced by me in the open Court on this the 8th day of April, 2024)

(Smt.Bhamini)
Senior Civil Judge
& Prl. JMFC., Kumta.