Orders on application filed under section 91 of Cr.P.C.

1. The accused has filed this application under Section 91 of Cr.P.C seeking direction to the complainant to produce the documents i.e., income tax assessment for the year 2016-17 to 2023-24, copy of Adhaar card, PAN card and passport.

2. It is stated in the application that as per the defence taken by the accused he was not borrowing any loan from the complainant, but he was taken hand loan of Rs. 2 lakh from one Aravinda Hegde, the loan amount received through his friend one Kalavara Udaya Shetty after issuance of bearer cheque in favour of the accused by him probably in the year 2015-2016. As per instruction of above said Aravinda Hegde, he was handed over a signed black Cheque leaf without mentioning date and amount to the Kalavara Udaya Kumar Shetty. The accused not at all signed and executed any cheque for payment of lawful dues in favour of the complainant. The accused has already paid the hand loan amount with interest to Aravinda Hegde. Either in legal notice, complaint or in evidence-in-chief, the complainant was not mentioned specific date borrowing of loan and not producing any relevant loan documents in order to prove his case. In order to give evidence in this case, the complainant was stepped into the witness box and during cross examination, he admitted that he has been an income tax assesse, his income tax documents are necessary before this Court in order to disprove the case of the complainant. Listed documents are very much necessary to prove the contentions taken by the accused. Otherwise the accused will be put to great hardship and prejudiced. The said documents are required for verification and further cross examination of the complainant. Hence prays to allow the application.

3. The complainant has filed an objection to the above application stating that the application filed by the applicant is not maintainable under law and facts. The complainant in his cross examination clearly stated that he has not disclosed loan in the Income tax returns. So producing the income Tax Assessment document is not necessary for this case. The complainant PAN card, Adhaar Card ae not necessary to produce in this case. The complainant having no passport in his name. The accused has filed this application for dragging the case. If the application is allowed complainant will be put to loss and hardship. If the application is dismissed no harm will be caused to the accused. Hence prays to reject the application.

4. Heard the arguments on both side and perused the materials on records.

5. On the basis of the application and the objection the following points are arise for my consideration.

//**POINT//**

1. Whether the accused has made out the grounds to allow the application ?

6. My Answer to the above point is in the **NEGATIVE** for the following.

//**REASON//**

7. The complainant has filed this case against the accused for the offence under Section 138 of NI Act. This application is filed to direct the complainant to produce the income tax assessment, copy of Adhaar Card, PAN Card and passport at the stage of further chief examination of DW1. The accused stated that the said documents are required to prove his case. The counsel for complainant stated that the complainant himself admitted that he has not disclosed the loan transaction in the income tax returns and he is not having passport and ready to produce the Adhaar card and PAN card and the said documents are not at all required. On perusal of materials on record the defence of the accused that he has not borrowed hand loan from the complainant and not issued the cheque towards the loan. He has borrowed hand loan of Rs. 2,00,000/- from one Aravinda Hegde. But the loan was received through Kalavara Uadaya Kumar Shetty who is the friend of Aravinda Hegde, after issuance of signed blank bearer cheque to him. The complainant in his cross examination clearly admitted that he is an income tax assessee and he has not disclosed the loan given to the accused in the income tax returns. When the complainant himself admitted that he has not disclosed the loan transaction in the Income tax returns, even if the income tax assessment is produced it will not help the accused to rpove his defence. The other documents sought to be summoned are copy of Adhaar card, PAN card and passport of the complainant. The above said documents are not at all required to prove the defence of the accused. Moreover, the accused cannot shift his burden of proof on the complainant. Therefore, considering the facts and circumstances this Court is in the opinion that the application needs to be rejected in the interest of justice. Accordingly, I proceed to pass the following:

//<u>ORDER//</u>

The application filed by the accused under section 91 of Cr.P.C is hereby rejected.

For Further Chief of DW1.

Call on 06-12-2024.

II Addl. Civil Judge and J.M.F.C.,
Kundapura