

**Orders on application u/s 45 and 71 of
Indian Evidence Act**

This application is filed by accused under section 45 and 71 of Indian Evidence Act and

prayed for sending the cheque /Ex.P.1 to the hand writing expert to compare the genuineness of the signature and writing over the cheque.

2. It is submitted that, complainant has filed the case against the accused for the offence punishable under section 138 of N.I.Act. Before registering the complaint, complainant has issued statutory notice to the accused and to which accused has issued reply notice by denying the allegations and contending that, the cheque does not bear his signature and signature over the cheque is imitation of his signature. He has also counter checked the cheque book issued by his banker i.e., ING Vyshaya bank Hosapete and noticed that, the cheque is pertaining to the year 2005. Thus the cheque produced before this court was obtained in the year 2005. The accused has no occasion to borrow an amount as alleged in the complaint and he has not seen complainant. Since the complainant has fabricated the cheque and forged the signature of the accused. Hence, it is necessary to send the cheque to the handwriting expert for his opinion as to the genuineness after comparison. The same is necessary in order to rebut the presumption and to defend his case. If the application is not

allowed he will be prejudiced. If allowed no hardship will be caused to other side. Hence prayed to allow the application.

3. The complainant has filed objections contending that, the application is false vexatious and not maintainable in law. The application is filed with an intention to cause delay to the proceedings. Accused has not denied his signature over the cheque in his reply notice. It is for the first time accused is contending that, cheque is forged one. If the contention of the accused as to forgery is true one definitely, banker would have return the cheque with an endorsement that the signature of drawer does not tally or forged. But this is not the case herein. Hence prays to dismiss the application with cost.
4. Heard the arguments and perused the material available on record.
5. The following points arise for consideration;

POI N T S

1. **Whether the applicant/accused has made sufficient ground to send the cheque to handwriting expert?**
2. **What order?**

6. The answer to 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 complaint has been filed against the accused for the offence punishable under section 138 of N.I.Act. When the case is posted for further chief of PW1, accused has filed this application, but at that stage, it was kept in abeyance. Now after the conclusion of cross of PW.1 and when the case is posted for 313 statement, counsel for the accused has pressed this application. The accused also relied upon the judgment between Annappa Maruti Magadum V/s Karnataka Multipurpose Souharda Sahakari Ltd., Chikodi reported in Crl Petition No. 100852/2019, dated 17-09-2019, wherein Hon'ble High Court of Karnataka referred decision between N. Muniswamy Reddy V/s M. Narayanaswamy reported in 2014 SCC 2869 and Shri Ishwar V/s Sri Suresh reported in ILR 2009 Kar 4310, wherein it is held that, "*accused can not be convicted without giving an opportunity to present his case in support of his defence which is a valuable right and denial of that right means denial of fair trial.*"

Therefore, granting an opportunity to adduce the evidence and to refer the cheque for an expert examination is necessary". Accused has filed this application on the ground that, he has contended in his reply notice that, the alleged cheque does not bear his signature and his signature has been forged one. Further, the cheque is of the year 2005. Per contra, complainant resisted the application on the ground that, it is filed in order to protract the proceedings and if the contentions of the accused were true, the cheque would have return by the bank with the endorsement, the signature of the drawer does not tally.

9. In the case on hand, accused has contended in the application that Ex.P.1 does not bear his signature and relies on the reply notice issued by him. The said reply notice is not marked, but it is there in the file. I have perused the same, wherein accused contends about issuing of blank cheques including cheque at Ex.P.1. I have perused the cross-examination of PW.1, wherein there is a defence that the signature over cheque was not written in the handwriting of accused and it is not his signature. Therefore, court is of the opinion that the above referred Judgments relied by counsel for accused aptly applies to the case in

hand. Accused in this case has also disputed signature over the cheque therefore, it is necessary that for fair trial, accused should be given opportunity to prove his defence. Further, complainant will not be prejudiced in this case as he has opportunity to cross examined witnesses of accused pertaining to the same. In view of the discussion, **I hold point no 1 in the Affirmative.**

11. Point No.2:- For the reasons stated while discussing point No.1, the following order is passed;

ORDER

The application filed by the accused under section 45 and 71 of Indian Evidence Act is hereby allowed.

For Steps pertaining to the application.Call on 07.10.2022.

**ADDL.CIVIL JUDGE & J.M.F.C.
Hosapete.**

