

KABI440020512017



**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C.
HOSAPETE.**

Present: **Ashok R. H.,**
Addl. Civil Judge & J.M.F.C.
Hosapete.

Dated this the 21st day of June, 2024

C.C.No.1700/2017

K.Sadashivappa S/o. Late Thippe
Swamy, Age: 58 years, Agriculturist,
R/o. 76 Venkatapura village,
Hosapete Taluk, Ballari District.

(By Sri.K.C.B., Advocate)

..... Complainant

Versus

C.Vinod Kumar S/o. Rajanna,
Age: 36 years, Gold Merchant,
Sridevi Jewellers, Main Bazaar,
Hosapete, Hosapete Taluk, Ballari
District.

(By Sri. G.V.P., Advocate).

..... Accused

Order on Application filed U/Sec.91
of Cr.P.C., by the accused

The accused has filed this application seeking to
call for the specimen card from the banker pertaining to

the account number of the accused, so as to send the same to the expert opinion to compare the admitted signature with that of disputed signature.

2. It is stated in the application that on the last occasion, the accused had filed an application for expert opinion which was allowed. The Court had referred the document to handwriting expert. The handwriting expert has communicated a letter to this Court and has requested to send the specimen signatures and writings of the accused between the contemporary period 2015-2023 that will help them to prepare early. The accused tried to furnish some other documents. The complainant has objected the same. Now the accused had traced some other documents. The accused had opened a bank account at Syndicate Bank, Hosapete branch, vide account No.06211010002469 and he had also opened one more account at Karur Vysya Bank Ltd., Hosapete, vide account No.132813511285. The above said accounts were opened in between 2015-2017. While opening the accounts, the accused had executed his specimen signatures to honour the cheques. The said documents are in the custody of the above bankers. The accused has tried his best to secure the specimen cards

from the bankers, but was unable to do so. Hence, the present application is filed.

3. The application is resisted by the complainant on the ground that the present application is filed to delay the proceedings. On allowing of application filed by the accused seeking expert opinion, the document was called from ING Vysya Bank, merged with Kotak Mahindra Bank and same was sent to the expert along with cheque Ex.P.1, for comparison and report. The Expert has observed that the disputed signature on the cheque Ex.P.1 is dated 04.01.2017 and compared with the admitted signature and opined that they are in different patterns. The expert has also stated that there is time gap of approximately 12 years between the questioned signatures and standard signatures. Thus, the Expert has requested to send the specimen signatures of the accused between the contemporary period 2015-2023. The accused himself has prayed to send the vakalath, bond obtained by the Court and the signature on reply notice. Sending of the said document would serve the purpose. Thus, the present application is not necessary and is irrelevant. The signatures on Ex.P.1, Ex.P.6 and Ex.P.11 are during the relevant period 2015-2023. On these grounds, it is prayed to reject the application.

4. Heard both sides & perused the materials placed on record.
5. The following points arise for consideration:
 1. Whether the application filed by the accused deserves to be allowed?
 2. What order?
6. The answers of this court to the above points is as under:

Point No.1: In the Affirmative.

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

REASONS:

7. **Point No.1:** The complainant has filed this complaint U/Section 138 of N.I. Act, alleging that the accused had issued cheque bearing No.500237 drawn on ING Vysya Bank, Hosapete for Rs.10,00,000/- towards repayment of the loan. The said cheque was dishonoured. In spite of notice, the accused has not repaid the said amount. This Court has taken cognizance of the said offence and issued summons to the accused. The accused has appeared before the Court. The trial is commenced. On perusal of the order sheet, it is seen that earlier, the accused had filed application

Under Section 45 R/w Sec.71 of Indian Evidence Act seeking to send the cheque for handwriting expert. The said application was allowed. This Court had sought the account opening Form from Kotak Mahindra Bank which had the signature of the accused and the said document, account opening Form pertaining to Vysya Bank and cheque were sent to examination. The Truth Labs which is a Forensic Science Laboratory, has sent a letter to this Court stating that when the admitted signatures and the disputed signatures were examined, it was found that there is time gap of approximately 12 years between the questioned signature and standard signature. Hence, in order to examine the disputed writings, it is requested by the Truth Labs, Bangalore to send specimen signatures and writings of the accused between the contemporary period of 2015-2023 that would help the expert to prepare the report early.

8. This Court has already formed an opinion vide order dated 27.09.2022 that there is a need to send the disputed signature of the accused on the cheque and his admitted signature to the handwriting expert for comparison. Under such circumstances, it is necessary to send the documents as sought for by the handwriting expert. Now that the accused has sought to call for

document from Karur Vysya Bank Ltd., Hosapete and Syndicate Bank, Hosapete branch, wherein he has opened the account between 2015-17. The said documents appear to be relevant to be sent to the expert for examination. Though the application is resisted on the ground that there are other documents on the file of this case, it is necessary to send the documents which would bear the signature of the accused at an undisputed point of time. This would enable the handwriting expert to compare the admitted signature and disputed signature and give his opinion. The complainant would not be put to prejudice if application is allowed. The account opening Form should necessarily be in the possession of the bank where the account of te accused is opened. Accordingly, this court has answered Point No.1 **In the Affirmative.**

9. **Point No.2:-** In view of the above answer and by considering the facts and circumstances of the case, this court proceeds to pass the following;-

ORDER

The application filed by the accused U/Section 91 of Cr.P.C., is hereby allowed.

Issue summons to Manager, Syndicate Bank, Hosapete branch to produce the account opening form pertaining to account No.06211010002469, which is in the name of the accused.

(Dictated to the stenographer, transcribed by her on the computer and corrected and revised by me and then pronounced in the open court on this day of 21st day of June- 2024).

(Ashok R.H.)
Addl. Civil Judge & JMFC,
Hosapete.