

ORDER BELOW EXH.52 IN C.C.NO.355/SS/2017

This is an application filed by accused seeking permission to cross-examine the complainant.

02. The accused contended that the accused may be permitted to cross-examine the complainant to defending his case as there is good chance to the accused in the case. Hence, the accused has filed present application and prayed for allow of the application.

03. The complainant has filed say overleaf vide Exh.52 and contended that appropriate order may be passed.

04. I have heard learned advocates for the accused and the complainant. Learned advocate for accused submitted that the cross-examination of the complainant is required to put the defence of the accused. The accused has not signed the disputed cheque. Therefore, accused may be permitted to cross-examine and she prayed for allow of the application.

05. On the contrary, learned advocate for complainant submitted that the documents are proved. The disputed cheque is returned dishonored with remarks 'Funds Insufficient' and therefore, no substance in the contention that accused has not signed disputed cheque. Hence, he prayed for rejection of the application.

06. On perusal of the application, the accused merely contended that the cross-examination of the complainant may be permitted. Except said cryptic and vague contention, he has not mentioned any defence in the application. Though the learned advocate for accused submitted that accused has not signed disputed cheque, said contention does not find any place in the application. Further, the

learned advocate for complainant rightly submitted that disputed cheque is returned dishonored with remarks 'Funds Insufficient'. Therefore, said remarks of 'Funds Insufficient' also shows that there is no substance in the contention of learned advocate for accused that accused has not signed the disputed cheque. Therefore, the accused has not made out any ground for the cross-examination.

07. In this regard reference is required to be made to the authority of **Hon'ble Bombay High Court** in the case of **Mr. Somnath Sharad Mandrekar vs Ms. Patricia Reiter, in Criminal Writ Petition No.90 of 2023 decided on 28/02/2023** wherein it is laid down that, application filed by the accused under section 145(2) of Negotiable Instruments Act, 1881 sets out absolutely no defence at all. The application merely states that the accused wants to cross examine complainant for defending herself in the complaint filed against her under section 138 Negotiable Instruments Act, 1881. Completely ignoring the law laid down by Hon'ble Supreme Court as well as this court, the JMFC allowed the application of the accused, to cross examine the complainant and his witnesses, in view of the so-called substance of the defence set out in the application. There is no defence whatsoever stated in the application and therefore, order passed by JMFC suffers from an error on the face of the record.

08. In the present case also, the accused has not made out any specific reason or defence to show that he has grounds for cross-examination. The application is lacking grounds of cross-examination or defence of the accused. Thus, the accused has failed to make out grounds for permitting the cross-examination. Hence, application is liable to be rejected. Accordingly, I proceed to pass following order :-

ORDER

1. The application is rejected.
2. Dictated and pronounced in open court.

Date : 13.02.2025

KCK/-

(A.S. Tekale)
Metropolitan Magistrate
14th Court, Girgaon, Mumbai.