

ORDER BELOW EXH.35 IN C.C.NO.838/SS/2020

This is an application filed by accused seeking permission to cross-examine the complainant vide Section 145(2) of Negotiable Instruments Act, 1881 (*In short 'N. I. Act'*).

02. The accused contended that accused wants to cross-examine the complainant. The accused has sufficient evidence to rebut the presumption and good points to put with defence such as transaction was between various parties and accused alone is not responsible. The accused has sufficient evidence to prove that there was no existing liability at the time of issuance of disputed cheque. Hence, the accused has filed present application and prayed for allow of the application.

03. The complainant has resisted the application by filing say overleaf vide Exh.35 and denied the application. The complainant contended that the accused has obtained more than five dates. Sufficient opportunity was given to the accused. The accused is intending to drag the matter and delay the trial. If opportunity to cross-examine is given, heavy cost may be imposed.

04. I have heard learned advocates for the accused and complainant. Learned advocate for accused submitted that the accused has good points of defence. The transaction took place between various parties and the accused alone is not responsible. Hence, the cross-examination of PW1 is necessary and prayed for allow of the application.

05. On the contrary, the learned advocate for the complainant submitted that the accused has been given ample opportunity. Despite it, accused failed to proceed further. The accused is delaying the trial.

Heavy cost may be imposed, if accused is permitted to cross-examine the complainant.

06. On perusal of the application, the accused contended that the transaction was between various parties and accused alone is not responsible. However, except said vague contention no specific defence is mentioned. It is pertinent to note that, the demand notice is duly served upon accused vide acknowledgment receipts vide Exh.11 colly. Further, it is not contention of the accused in the application that demand notice is not served. However, the accused have not replied to demand notice denying the transaction or liability. Hence, the defence of the accused appears to be sham and moonshine. Hence, the accused failed to make out defence to permit the accused to conduct the cross-examination of the complainant.

07. 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 : 05.03.2025

KCK/-

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