

MHSN110004922016



ORDER BELOW EXHIBIT 62 IN SCC NO.
172/2016
Rajendra Zare Vs. Shivaji Lade

1] This is an application filed by accused for issuance of disputed cheque to handwriting expert for opinion of the contents in the disputed cheque except signature.

2] It is the contention of accused that, the disputed cheque is on exh. 31 bearing no. 936929 of State Bank Of India. The complainant has been examined in the present case and the accused have specifically give suggestion in cross examination that, the contents in the disputed cheque except signature is not written by accused, to which the complainant has answer in the negative. There is difference in the contents of cheque and signature. The contents are written by the accused. So, it is necessary to consider the contents in the disputed cheque are in the handwriting of accused. Hence, prayed to allow the application.

3] The complainant has filed say below exhibit 65 and resisted the application. It is the contention of the complainant that, the false application is filed by the accused. The accused has filed the application to prolong the matter. The application is not tenable in the eye of law. Hence, prayed to reject the application.

4] Heard both the advocates. It is submitted by the accused

Sd/-

R.B. Kulkarni
Jt. C.J.J.D. & JMFC Atpadi

that, the arguments of the accused are as per the application. The accused has relied upon **1) 2010 ALL MR (Criminal Journal 68) Ishwar Hadimani Vs. Suresh Pattepur 2) 2014 ALL MR 168 -Vinod Mehare Vs. Jitendra Kapase, 3) 2014 ALL MR (CRI) 206- Gangadhar Kadam Vs. State of Maharashtra 4] 2015 ALL MR (Cri) 1797 – Balasaheb Kolhe Vs. Jagdish Mandlik.**

5] Whereas the Advocate for complainant has argued that, the accused is admitting signature over the disputed cheque. The application is filed to prolong the matter. Accused appear in the year 2016 ans has filed application in the year 2023 without any just evidence. The citations relied by the accused are not applicable to the accused case in hand. Hence, prayed to reject the application.

6] I have gone through the contentions in the application, say and arguments advanced by both the parties. I have also gone through the entire record. At the outset, it is pertinent to note here that, the authorities relied by the accused and the facts and circumstances in the present case differs. So, the authorities relied by the accused are not helpful to the accused considering the facts in the present case in hand.

7] The complainant has examined total three witnesses. The statement of the accused u/s 313 is yet not recorded. The accused has filed present application in the year 2023 whereas, he was having knowledge of fact as alleged in the application. On perusal of cross-examination, the accused has given suggestion in para 6 of the cross-examination which denied by the complainant. It is pertinent to note

here that, the accused has admitted the signature over the disputed cheque and thus the presumption of 118 and 139 are attracted. It is settled law that, the accused admits the signature over the disputed cheque, the application for handwriting expert is not tenable and the focus should instead be on the defence's liability to prove any claim of misuse and lack of liability. It is also settled principle of law that, there must be some admitted material on record before filing any application for sending the document to handwriting expert. In the present case in hand there is no any admitted handwriting of accused on record to send the disputed cheque for opinion of the expert.

8] It is also pertinent to note here that, section 118 of Negotiable Instrument Act provides a clear presumption regarding endorsement made on the Negotiable Instrument being in order in which they appear thereupon. It is the presumption of endorsement on the cheque being genuine operates in favour of holder in due course of the cheque i.e. the complainant. In case, the accused intends to rebuts such presumption, he would be required to lead evidence to this effect. It is also pertinent to note here that, apparently on perusal of disputed cheque below exhibit 31 and considering the provisions of section 73 of the Evidence Act prima facie this Court is of the opinion that, the contends in the disputed cheque and signature are in a same ink with same handwriting.

9] The accused has filed application after putting his substantial defence by way of cross-examination. In the cross-examination, he has only given suggestion in that regard and no other circumstances are brought on record. Hence, legally the

application is not tenable in the eyes of law. The presumptions are in favour of the complainant and the accused has to rebut such presumption by appropriate evidence and the accused cannot expect the Court to collect the evidence on his behalf by filing such type of application.

Hence, considering all these facts and circumstances, I do not find any substance in the application. Hence I proceed to pass following order.

ORDER

Application below exhibit 62 is stands rejected.

Date:- 30/01/2025
Atpadi

(R.B. Kulkarni)
Jt. Civil Judge Junior Division
Atpadi, Dist- Sangli

CERTIFICATE		
I affirm that the contents of this P.D.F. file Order/Judgment is same word for the word as per original Order/Judgment.		
Name of Steno	:-	Shri. A.R. Jadhav, Steno (Grade-3)
Court Name	:-	R.B. Kulkarni Jt. CJJD & JMFC, Atpadi, Dist- Sangli
Date of Order/Judgment	:-	30.01.2025
Signed by PO on	:-	30.01.2025
PDF uploaded on	:-	31.01.2025