



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

CRIMINAL PETITION NO. 156 OF 2023

(482(Cr.PC) / 528(BNSS))

BETWEEN:

1. MR. KISHORE SALIAN
S/O MR. SRINIVAS
AGED ABOUT 52 YEARS
R/AT KORGA HITHLU, ALAPE
PADIL POST, MANGALURU
D.K.DISTRICT - 575 007.

...PETITIONER

(BY SRI. RAJASHEKAR S., ADVOCATE)

AND:

1. MR. N. P. SHENOY
S/O G.G.SHENOY
MAJOR IN AGE
R/AT "PREETHI COMPLEX"
ALAKE, MANGALURU
D.K.DISTRICT - 575 005.

...RESPONDENT

(SRI. N.P.SHENOY, RESPONDENT - SERVED)

THIS CRL.P. IS FILED UNDER SECTION 482 OF CR.P.C.
PRAYING TO SET ASIDE THE ORDER DATED 25.11.2022
PASSED IN C.C.NO.5686/2019 PENDING ON THE FILE OF THE
JUDICIAL MAGISTRATE FIRST CLASS, IV COURT, MANGALURU,
D.K., REJECTING THE APPLICATION FILED BY THE
COMPLAINANT UNDER SECTION 45 OF INDIAN EVIDENCE ACT
AND THEREBY ALLOW THE SAID APPLICATION.





THIS PETITION COMING ON FOR ADMISSION, THROUGH PHYSICAL HEARING/VIDEO CONFERENCING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.I.ARUN

ORAL ORDER

The criminal petition is filed with the following prayers:

"WHEREFORE, it is prayed that this Hon'ble Court may kindly be pleased to set aside the order dated 25.11.2022 passed in C.C.No.5686/2019 pending on the file of the Judicial Magistrate First Class, IV Court, Mangaluru, D.K rejecting the Application filed by the Complainant under Section 45 of the Indian Evidence Act and thereby allow the said application as prayed for and grant such other and further reliefs as this Hon'ble Court deems fit and proper under the facts and circumstances of the case in the interest of justice."

2. In spite of service of notice, the respondent has remained absent.

3. The petitioner is the complainant before the trial Court and he has preferred a private complaint before the trial Court alleging that the respondent is guilty of committing an offence under Section 138 of Negotiable Instruments Act, 1881.



The respondent has denied his signatures on the cheques. Though there is a presumption in favour of drawee of the cheque, he is still required to prove his case and depending upon the peculiar facts and circumstances of each case, when the signature is denied by the accused, it may be necessary for the complainant to make an application for referring the same to be examined by an expert.

4. In the instant case, as the respondent/accused denied his signatures on the cheques, the petitioner/complainant has made an application under Section 45 of the Indian Evidence Act, 1872 to have the disputed signatures on the cheques to be examined by an expert. The trial court has rejected the same by passing the following order:

*"ORDERS ON APPLICATION UNDER SECTION 45 OF
INDIAN EVIDENCE ACT.*

The advocate for the complainant has filed this application to refer the disputed signatures at Ex.P1 to Ex.P4 and other admitted signature of the accused to handwriting expert for obtaining an opinion whether the said signatures are of the same person or not. It is



stated that the complainant has produced and got marked the documents Ex.P1 to Ex.P4 contending that the accused has executed the said document. The accused has denied the execution of the document and to bring out the truth it is necessary to refer the disputed signature found in Ex.P1 to Ex.P4 to handwriting expert and to obtain the opinion of the expert and thereby prays to allow the application.

The learned advocate for the accused has filed objection and stated that, the complainant has filed the above application with intention to drag the proceedings and harass the accused. Therefore the application itself not maintainable and he has prayed for reject the application.

Heard the learned counsels.

The complainant has filed above application at the stage of argument on main. On perusal of the materials available on record it is reveals that the Ex.P1 to Ex.P4 were returned with an endorsement of Drawers signature differs. The signature in Ex.P1 to Ex.P4 were not admitted one which are marked as Ex.P1(a) to Ex.P4(a) the complainant has seeking an order for refer the Ex.P1 to Ex.P4 which are the documents of cheque for opinion of handwriting expert in respect signature in Ex.P1(a) to Ex.P4(a) and other signature in the file were belongs to accused are not. The accused has not admitted his signature in Ex.P1 to Ex.P4 at the time of evidence of PW1 and he has produced the Ex.D2 which is account



opening form along with specimen signature of accused. On perusal of the said signature and Ex.P1(a) to Ex.P4(a) it is forthcoming that there is a difference between the specimen signature in Ex.D2 and Ex.P1(a) to Ex.P4(a) and the complainant counsel has not made out sufficient reason to allow the application because he has not disputed the specimen signature in Ex.D2 and also signature in vakalath, bail bond and 313 statement of accused. But he only seeking an order for refer the Ex.P1 to Ex.P4 to get expert opinion in respect to signature of accused. In this case it is clearly reveals that the specimen signature of accused in Ex.D2 and Ex.P1(a) to Ex.P4(a) were contrary one.

In view of the above observation this Court has comes to conclusion and Proceed to pass the following:

ORDER

Application filed by the complainant under section 45 of Indian evidence act is hereby rejected.

For argument by complainant finally on 30.11.2022."

5. The case of the petitioner is that, while passing the impugned order the trial Court has virtually given a finding that the signatures on the cheques are not made by the accused/respondent herein , which in his opinion is erroneous.



It is contented that if the same is referred to an expert, the expert opinion will help the petitioner proving his case and under the peculiar facts and circumstances of the case, the same is warranted.

6. The trial Court cannot be compelled to refer the disputed signature to an expert in all the cases. Depending on the facts and circumstances of the case, if the trial Court is of the opinion that sufficient evidence has been let in by which it can come to the conclusion that the signature is that of the accused or not, then in that event it need not refer the matter to an expert. Many a times an application is made to refer the signatures to the expert with the intention of only protracting the proceedings.

7. But in the instant case, it is seen that the trial Court has observed in the impugned order that there is variation in the signatures on the cheques when compared with the admitted signature of the accused. This is not based upon the evidence let in, but the same is based upon the observation of the trial Court as to the signatures of the accused on the



cheques as well as on certain other documents. This has the effect of virtually pronouncing that the accused is not guilty of the alleged offence.

8. Section 45 of the Indian Evidence Act, 1872 reads us under:

"45. Opinions of experts.--When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts"

9. The Court is not an expert to pronounce on the identity of handwriting. The impugned order rejecting the request of the petitioner is not passed on the ground that by other corroborative evidence that has been let in by the parties concerned, Court is of the opinion that it can form an opinion whether the cheque has been issued by the respondent/accused. On the contrary, the Court by verifying the signatures on the cheques and on certain admitted



documents of the accused, has come to the conclusion that there is a variation on the signatures of the cheques. Under the circumstances, the fate of the entire case depends upon the opinion of the Court about the signatures made on the cheques. When that is the situation, I am of the opinion that it is appropriate for the Court to refer the matter to an expert when it is prayed for by the petitioner/complainant. Not doing so, under the given peculiar facts and circumstances of the case has to be considered as a erroneous.

10. Hence the following:

ORDER

- i. The petition is hereby ***allowed***;
- ii. The impugned order dated 25.11.2022 passed by the JMFC IV Court, Mangaluru on the application filed under Section 45 of Indian Evidence Act, 1872 by the complainant/petitioner herein is hereby set aside;



- iii. The trial Court is directed to allow the application filed by the petitioner/complainant and refer the disputed signatures to be examined by an expert as prayed for.

**SD/-
(M.I.ARUN)
JUDGE**

PGG
List No.: 1 Sl No.: 21