HC-KAR
CNR: KAHC010223472025

NC: 2026:KHC:61919
CRL.P No. 4859 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 4859 OF 2025 (482(Cr.PC) / 528(BNSS)-)

BETWEEN:

SRI T DILEEP KUMAR SHETTY
S/O HIRIYANNA SHETTY
AGED ABOUT 57 YEARS
PRESENTLY R/AT D.NO 129, 16TH CROSS
A BLOCK, J.P.NAGAR,
MYSORE

...PETITIONER

(BY SRI. RANJAN KUMAR K.,ADVOCATE)

AND:

SMT JAYALAKSHMI Y C
W/O S.V.KISHORE KUMAR
AGED ABOUT 66 YEARS,
R/AT NO 463, 11TH CROSS
7TH MAIN, GUKULAM 3RD STAGE
MYSORE

...RESPONDENT

(BY SRI. S VENUGOPALA., ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) PRAYING TO SET ASIDE THE ORDER PASSED BY THE COURT OF THE VII ADDL. CIVIL JUDGE AND JMFC AT MYSORE DATED 04.03.2025 IN THE CC.NO.37650/2022 ON THE APPLICATION FILED BY THE PETITIONER U/S.45 INDIAN EVIDENCE ACT.

THIS CRIMINAL PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioner is before this Court seeking for the following reliefs;

> *Set aside the order passed by the court of the VII Addl. Civil Judge and JMFC at Mysore dated 04.03.2025 in the CC.No.37650/2022 on the application filed by the petitioner u/s.45 Indian Evidence Act.*

2. Respondent No.2 filed a private complaint under Section 200 of the Code of Criminal Procedure, 1973, read with Section 138 of the Negotiable Instruments Act, 1881, in PCR No.1609 of 2022. After recording the sworn statement, the complaint was registered as C.C. No.37650 of 2022.

3. Notice was issued to the petitioner, who entered appearance before the trial Court.

4. The complainant led evidence and was cross-examined. When the matter was posted for the evidence of the accused, the petitioner filed an application under Section 45 of the Indian Evidence Act seeking reference of the subject cheque to a handwriting expert. The ground urged was that respondent No.2 had forcibly obtained a blank signed cheque from the petitioner and that the particulars

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appearing on the cheque, except the signature, had not been written by him. The petitioner, therefore, sought examination by a handwriting expert to ascertain who had written the particulars on the cheque.

5. The application was opposed by respondent No.2. It was contended that the statutory notice issued upon dishonour of the cheque had not been replied to by the petitioner; that the petitioner had admitted his signature on the cheque and the Memorandum of Understanding entered into between the parties; and that the application had been filed only with a view to delay the proceedings.

6. The learned Magistrate, after considering the rival contentions, dismissed the application. The Magistrate took note of the Memorandum of Understanding between the parties, the admission of the signature on the cheque and the fact that the petitioner's defence was that the cheque was blank when it was obtained by the complainant. The Magistrate was of the view that there was no necessity to refer the cheque to the Forensic Science Laboratory or to a handwriting expert.

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7. The learned Magistrate further observed that the petitioner had admitted his signature on the cheque and that the mere fact that the other particulars had been filled in by another person would not, by itself, invalidate the cheque. The Magistrate also referred to Section 20 of the Negotiable Instruments Act while considering the effect of a signed blank instrument. Aggrieved by the dismissal of the application, the petitioner is before this Court.

8. Learned counsel for the petitioner relies upon the decision of the Hon'ble Supreme Court in ***Kalyani Baskar v. M.S. Sampoornam***, reported in MANU/SC/8878/2006, more particularly paragraph 12 thereof, which is reproduced hereunder for ready reference:

> *"**12.** Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The*

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appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable."

9. By relying upon ***Kalyani Baskar***, learned counsel submits that the accused is entitled to a fair trial and that the right to defend includes the right to adduce evidence in support of the defence. According to him, when the petitioner disputes the authorship of the particulars filled in the cheque, the cheque ought to have been referred to a handwriting expert so that the petitioner has an opportunity to establish his defence.

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10. Learned counsel also relies upon the decision of the Hon'ble Supreme Court in ***T. Nagappa v. Y.R. Muralidhar*****,** reported in MANU/SC/7523/2008, more particularly paragraphs 7 and 8 thereof, which are reproduced hereunder:

"7. When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, which reads as under:

'Section 243 - Evidence for defence

(1) ….

(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.'

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8. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant."

11. By relying upon ***T. Nagappa's case***, learned counsel submits that the right of an accused to defend himself is a facet of the right to fair trial guaranteed under Article 21 of the Constitution of India. He submits that where the accused seeks assistance of the Court to obtain expert evidence in support of his defence, such request ought to be considered favourably, subject to the relevance of the evidence sought to be produced.

12. On the strength of the above decisions, learned counsel contends that the trial Court ought to have allowed the application and referred the cheque for examination by a handwriting expert.

13. Heard Sri Ranjan Kumar K., learned counsel for the petitioner, and Sri V. Venugopala, learned counsel for respondent No.2. Perused the papers.

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14. The facts necessary for consideration of the present petition are not in dispute. The petitioner admits his signature on the subject cheque. His defence is that respondent No.2 forcibly obtained a blank signed cheque and that the particulars appearing on the cheque, other than the signature, were filled in by someone else. The application filed before the trial Court is confined to ascertaining whether the particulars on the cheque were written by the petitioner or by another person.

15. The first question that arises for consideration is whether the authorship of the particulars filled in a cheque, when the signature of the drawer is admitted, is a matter which requires examination by a handwriting expert for the purpose of rebutting the presumption under Section 139 of the Negotiable Instruments Act.

16. The accused admitted having signed the cheque but contended that he had handed over a signed blank cheque and that the particulars were filled in by another person. The fact that the particulars in a cheque were filled in by a person other than the drawer is immaterial for determining whether the cheque was issued towards discharge of a debt or

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liability. The presumption arising under Section 139 cannot be rebutted merely by a report of a handwriting expert and that no useful purpose would be served by permitting such examination.

17. Even if the opinion of the handwriting expert were to establish that the particulars appearing on the cheque were not written by the petitioner, that circumstance, by itself, would not rebut the presumption under Section 139 of the Negotiable Instruments Act. The report would establish only the authorship of the writing and would not establish whether the cheque was obtained forcibly, whether it was issued towards discharge of a liability, or whether any legally enforceable debt existed.

18. The allegation that the cheque was forcibly obtained is a defence which the petitioner is entitled to raise before the trial Court. However, the question as to who filled in the particulars on the cheque is distinct from the question whether the cheque was obtained by force or coercion. A handwriting expert's opinion on the authorship of the particulars would not establish the circumstances in which the cheque came into the possession of respondent No.2. The petitioner is at liberty to establish that defence by

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such other relevant and admissible evidence as may be available to him.

19. The decisions in ***Kalyani Baskar and T. Nagappa*** do recognise the right of an accused to adduce evidence in support of his defence and emphasise that a request for assistance in securing evidence must be considered in the light of the requirements of a fair trial. However, those decisions do not lay down that every request for expert examination of a cheque must necessarily be allowed. The Court must examine whether the evidence sought is relevant and whether it would assist in determining a material issue in the case.

20. In **Kalyani Baskar's case**, the accused disputed the genuineness of her signature on the cheque. The expert opinion was therefore sought to determine whether the signature itself was that of the accused. In the present case, the petitioner admits his signature and disputes only the authorship of the particulars filled in the cheque. The distinction is material.

21. In **T. Nagappa's case**, the accused sought an examination of the age of the signature vis-à-vis the other writings on the cheque. His defence was that

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the cheque had been issued as security in the year 1999 against a hand loan which had already been repaid, but had subsequently been misused. The expert examination was sought to ascertain whether the signature and the other writings were made at the same time.

22. The present application, on the other hand, seeks only to ascertain who wrote the particulars appearing on the cheque. In the present case, the cheque is dated 30.07.2022. It was presented on the same date and was subsequently presented on 28.09.2022. It is also seen that the corrections appearing on the cheque have been counter-initialled by the petitioner. These circumstances are relevant to the defence and are matters which the trial Court may consider along with the other evidence on record. However, the decisive consideration for the present application is that the proposed handwriting examination would determine only whether the particulars were written by the petitioner or another person. Such an opinion would not assist in determining whether the cheque was issued towards discharge of a debt or liability.

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23. The right of an accused to lead evidence in support of his defence is undoubtedly a valuable right. At the same time, such right does not entitle an accused to insist upon the production of evidence which would not assist in deciding the issue in controversy. The trial Court is required to consider whether the proposed evidence is relevant and necessary for a just decision of the case. In the present matter, the learned Magistrate has declined the request for expert examination. Having regard to the nature of the defence, no error can be found in the said order warranting interference by this Court.

24. It is made clear that the petitioner shall be at liberty to raise all legally permissible defences before the trial Court, including the contention that the cheque was forcibly obtained and was not issued towards discharge of any legally enforceable debt or liability. The observations made in this order are confined to the request for examination of the handwriting appearing on the cheque and shall not prejudice the consideration of the defence on its merits.

25. In that view of the matter, the criminal petition does not merit consideration and is liable to be dismissed and passes the following;

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ORDER

i. Criminal petition stands ***dismissed***.

ii. Liberty is reserved to the respondent to raise all defences before the trial Court.

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(SURAJ GOVINDARAJ)
JUDGE

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List No.: 1 Sl No.: 21