



Crl.OP(MD).No.21186 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 15.06.2026

ORDER PRONOUNCED ON : 19.06.2026
CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

Crl. OP(MD).No.21186 of 2025

and

Crl.MP(MD).No.18131 of 2025

M.Karthikeyan

....Petitioner

Vs

V.Ganesan

....Respondent

Prayer: This petition is filed under Section 528 of BNSS 2023, to call for the records pertaining to the order made in Crl.M.P.No.1216 of 2025 in S.T.C.No. 1070 of 2023 on the file of the Judicial Magistrate, Manapparai, dated 17.10.2025 and set aside the same by allowing this Criminal Original Petition.

For Petitioner

: Mr.G.Karnan

For Respondent

: Mr.J.Preetam

for Mr.V.Janakiramulu



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ORDER

The present petition has been filed by the accused in S.T.C.No.1070 of 2023 on the file of the Judicial Magistrate Court, Manapparai seeking to challenge the order passed under Section 39 of Bharatiya Sakshya Adhiniyam, 2023 (Indian Evidence Act).

2.The respondent herein had filed the above said complaint under Section 138 read with Section 142 of Negotiable Instruments Act. As per the said complaint, the accused is said to have borrowed a sum of Rs.14/- lakhs from the defacto complainant on 01.01.2023 and had issued a cheque on 21.07.2023 for the said amount. When the cheque was presented for encashment, it was returned with an endorsement 'Account Closed'. A statutory notice was issued on 02.08.2023 and a reply was sent by the accused on 16.08.2023. The complaint was ultimately filed under Section 138 r/w Section 142 of N.I.Act.

3.Pending trial, the accused had filed Crl.M.P.No.1216 of 2025 seeking to send the admitted and disputed handwriting of the petitioner for expert opinion. In the said application, the accused had contended that though he admits his signature in the cheque, he had contended that the complainant had filled the date, amount and his name. Therefore, the handwriting in the cheque is completely varies and hence, the cheque has to be sent for expert



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opinion to compare the handwriting found in the cheque with the admitted handwriting of the petitioner.

4.The defacto complainant has filed a counter contending that when the accused has not disputed his signature in the cheque or in the affidavit, there is no necessity for sending the cheque for expert opinion and it has been filed only to drag on the proceedings.

5.The trial Court after considering the submissions made on either side, has proceeded to dismiss the application primarily on the ground that when the accused has not disputed the signature in the cheque, no purpose would be served in sending the cheque for expert opinion. Challenging the same, the present petition has been filed.

6.According to the learned counsel appearing for the petitioner, the cheque was issued for a transaction in the year 2014 and that too for security purposes. However, the defacto complainant had entered the date as 21.07.2023 and presented the same after 9 years. In such circumstances, when the cheque is sent for expert opinion, he can find out the age of the ink and he can arrive at a finding that the cheque was issued in the year 2014. What was legally enforceable in the year 2014, could not be legally enforceable in the year 2023. In order to prove the said fact, namely the age of the ink, sending the document to the expert is necessary.



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7.The learned counsel has relied upon the decisions of this Court reported in **2011 (3) CTC 616** (*Elumalai Vs. Subbaramani*); **(2011) 2 MLJ (Crl) 595** (*A.Sivagnana Pandian Vs. M.Ravichandran*); **(2011) 3 MLJ (Crl) 440** (*A.Devaraj Vs. Rajammal*) and **(2008) 5 SCC 633** (*T.Nagappa Vs. Y.R.Muralidhar*) and contended that adducing evidence in support of defence is a valuable right. As part of the fair trial, to give a chance to the accused to prove his case, the accused must be granted an opportunity to determine the age of the ink.

8.Per contra, the learned counsel appearing for the respondent had relied upon a decision of the Hon'ble Supreme Court reported in **(2021) 5 SCC 283** (*Kalamani Tex and another Vs.P.Balasubramanian*) and contended that once the signature is admitted by the accused, the obligation shifts upon the accused to discharge the burden imposed upon him. He further contended that even if a blank cheque signed by the accused person is handed over, the presumption under Section 139 of N.T.Act, cannot be obliterated. He further submitted that when the petitioner has admitted the signature, even assuming it has been filled up by the defacto complainant, that would not in any way support the case of the accused person. The application has been filed only to drag on the proceedings. Hence, he prayed for dismissal of the petition.



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9. Heard the learned counsel appearing on either side and perused the material records.

10. A perusal of the petition filed by the accused under Section 39 of BSA reveals that the petitioner has admitted his signature in the cheque and only complains that he had not filled up the cheque. Therefore, if the cheque is sent for expert opinion, it could be found out that the cheque was not filled up by the accused person, but it was filled up by the defacto complainant. There is no contention whatsoever that the cheque was issued in the year 2014 and it has been belatedly utilized by the defacto complainant in the year 2023. Therefore, the contention of the learned counsel appearing for the petitioner that it should be sent for expert opinion to find out the age of the ink cannot be countenanced.

11. Section 20 of N.I. Act empowers the holder of the cheque to complete the cheque and the drawer so signing shall be liable upon such instrument.

12. The Hon'ble Supreme Court in a judgment reported in **(2024) 12 SCC 165 (Oriental Bank of Commerce Vs. Prabodh Kumar Tewari)** in Paragraph No.16 has held as follows:

“16. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which



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arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defence whether cheque was issued towards payment of a debt or in discharge of a liability.

13.In view of the above said legal position, when the petitioner had admitted his signature, but has only contended that it was filled up by some other person, no purpose would be served in sending the cheque for expert opinion. The trial Court has rightly dismissed the petition. There are no merits in the petition and this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

19.06.2026.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
msa

To

The Judicial Magistrate, Manapparai,



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R.VIJAYAKUMAR, J.

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