



**ORDER PASSED BELOW EXH.NO. 36**  
**(CNR No.MHLA030050082017)**

- 1) Perused the application submitted by the accused under Section 45 of Indian Evidence Act to refer the disputed the cheque and bank deposit slip for comparison with the admitted hand writing of the accused and complainant to the hand writing expert for obtaining expert opinion.
- 2) It is submitted on behalf of the accused that demand notice Exh-26 was issued by the complainant and received by the accused to which accused has replied through his advocate on 01/11/2017 which is at Exh-30. The defence of the accused is open in that reply. The disputed cheque Exh-22 and cheque deposit slip Exh-23 are written by the complainant whereas the signature on the disputed cheque is of the accused. The ink of the signature and the other material contents over the cheque and slip is different. So, accused wants to refer the disputed cheque to the hand writing expert for expert opinion. He is ready to deposit the charges of hand writing expert. No prejudice would be caused to the complainant if present application is allowed.
- 3) The complainant has filed say stating that, the application

is filed to prolong the matter without any sufficient reason. The signature of the accused has been duly admitted by the accused in his reply to the demand notice. So, there is no dispute regarding the signature of the accused on the disputed cheque. The complainant has filed his affidavit of examination-in-chief on 30/10/2018. The accused has intentionally filed the present application to avoid the cross-examination of the complainant and to prolong the case. As the accused has admitted his signature on the disputed cheque, there is no need to refer the cheque to the hand writing expert for his opinion.

4) I heard both sides. Ld. counsel for the accused relied on the judgment of Hon'ble Himachal Pradesh High Court in the case of **Nishal Mahajan Vs. Chander Bhan Singh 2017(1) DCR 54** wherein it is held that, *since main contravorsy of writing and signature is involved which can only be resolved with expert opinion so prayer for the same is to be considered leniently*. Ld. counsel further relied on the judgment of Hon'ble Supreme Court in **T.Nagappa Vs. Y.R.Muralidhar 2008(2) DCR 634** where it is held that, *the Court being the master of proceedings must determine as to whether the application filed by accused in terms of Sub Section 2 of Section 243 of Code Of Criminal Procedure is bona-fide or not or whether thereby he intends to bring on record a relevant material*.

5) On the other hand Ld. counsel for the complainant relied on the judgment of Hon'ble Madhya Pradesh High Court in the case of **Sunita Dubey Vs. Dev Kishan Ahirwar 2015(2) DCR 605** wherein it is held that, *in the case of signed blank cheque given by the accused, the drawer gives authority to the drawee to fill up the agreed liability.* He further relied on the judgment of Hon'ble Delhi High Court in the case of **Manu Sharma Vs. Anil Agrawal CRL.M.C. 1325/2012 decided on 20/04/2012** wherein it is held that, *to have a validity of Negotiable Instrument such as cheque, it is not mandatory and no law prescribes that the body of the cheque should also be written by the signatory to the cheque. A cheque could be filled up by anybody if it is signed by the account holder of the cheque, accepting the amount mentioned therein.*

6) Section 20 of the Negotiable Instrument's Act reads as under :-

*Section 20 - Inchoate stamped instruments. - Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1 [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing*

*shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."*

7) In the present case in hand, the complainant has filed his affidavit of examination-in-chief and cross-examination on behalf of the accused is yet to be started. The application is filed by the accused prior to the cross-examination of the complainant. So, it could not be said that the defence of the accused is open. The accused replied the demand notice. Office copy of it is produced on the record at Exh-30. Issuance of blank signed check by the accused is specifically admitted in the reply. It is not the case of the accused that he has not signed on the disputed cheque. So, there is no need to send the disputed cheque to the hand writing expert. As per provisions of Section 20 of the Negotiable Instruments Act, it is clear that the instrument may be wholly blank or incomplete in any particular, in either case the holder has the authority to make or complete the instrument as negotiable one. The authority implied by a signature to a blank instrument is so wide that the party so signing is bound to a holder in due course even though the holder was authorized to fill for a certain amount. So, the incomplete instrument is also valid and legally enforceable. By issuing signed blank cheque

the drawer gives authority to the drawee to fill up the blanks. As the accused has admitted his signature on the blank cheque it can be said that he has given authority to the complainant to fill up blanks. It can be easily gathered from the cheque Exh-20 that the signature and other contents are written by two different persons. For that purpose the disputed cheque could not be sent to the hand writing expert for expert opinion. In the light of foregoing discussion I am inclined to pass the following order to meet the ends of justice.

**ORDER**

Application is rejected.

**(Anand S. Munde)**  
**5<sup>th</sup> Addl. Chief Judicial Magistrate**  
**Latur**

**Date :30/01/2020.**

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	:-	Neeta Vishwanath Patil
Name of the Court	:-	A.S.Munde, 5 <sup>th</sup> Addln.C.J.M., Latur.
Date of Order	:-	30.01.2020
Order signed by the Presiding Officer on	:-	30.01.2020
Order uploaded on	:-	30.01.2020