

**(2024) 10 KL CK 0077**

**High Court Of Kerala**

**Case No:** Criminal Miscellaneous Petition No. 9007 Of 2024

Anu Kurian

APPELLANT

Vs

State Of Kerala

RESPONDENT

**Date of Decision:** Oct. 30, 2024

**Acts Referred:**

- Negotiable Instruments Act, 1881 - Section 20, 138

**Hon'ble Judges:** Bechu Kurian Thomas, J

**Bench:** Single Bench

**Advocate:** Ieans.C.Chamakkala, Aadhal Thankachan, Binu B.Samuel, Sreeja V

**Final Decision:** Dismissed

### **Judgement**

Bechu Kurian Thomas, J

1. Petitioner is the sole accused in C.C.No.56/2022 on the files of the Judicial First Class Magistrate Court-II, Muvattupuzha. He challenges the order

dated 19.04.2024 in CMP No.777/2023 in the aforesaid case whereby his application to send the cheque in question to a handwriting expert was

dismissed by the learned Magistrate.

2. The complaint was filed by the respondent alleging offence under Section 138 of the Negotiable Instruments Act, 1881. The complainant alleged

that the petitioner had issued a cheque for Rs.6,00,000/- on 24.11.2017 in repayment of the amount borrowed by him and when the said cheque was

presented for encashment, it was dishonoured with the memo "funds insufficient". Subsequently after complying with the statutory requirements,

a complaint was filed in the year 2018, which is now numbered as C.C.No.56/2022. After the evidence of the complainant was completed, a petition

was filed on 18.11.2023 requesting to send the cheque for the opinion of the handwriting expert as petitioner contended that the writings on the cheque are not his and alleges the same to be that of the complainant. The learned Magistrate, by the impugned order, dismissed the said application after finding that the opinion of the handwriting expert cannot advance the case of the accused.

3. I have heard Sr.Ieans C. Chamakkala, the learned counsel for the petitioner as well as Smt.Sreeja V., the learned Public Prosecutor.

4. At this stage of the consideration, it needs to be mentioned that the accused had not issued any reply notice to the statutory notice issued by the complainant. There is also no dispute regarding the signature on the cheque. However, petitioner disputes the writings on the cheque. According to him, since the complainant has accepted that the endorsement on the reverse side of the cheque belongs to him unless opinion is elicited regarding the writings on the cheque which according to him tallies with the entry on the reverse side, he would not be able to strengthen his defense.

5. In the decision in *Bir Singh v. Mukesh Kumar* [AIR 2019 SC 2446], the Supreme Court has observed that if a blank signed cheque is voluntarily handed over towards payment, the payee is entitled to fill up the blanks as provided under Section 20 of the NI Act. It was also observed that it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque was duly signed by the drawer.

6. Similarly in the decision in *Oriental Bank of Commerce v. Prabodh Kumar Tewari* 2022 Livelaw (SC) 714 the Supreme Court had observed that the presumptions under the NI Act, cannot be rebutted by writings on the cheque being that of another person especially when the signature is admitted. It was also held that even if the cheque was not filled up by the drawer but by another person, the same is not sufficient to rebut the presumption available under law.

7. Considering the circumstance that, the complaint was filed in the year 2018 and the petition for opinion of handwriting expert was filed only in 2023 that too at the fag end of the trial and further that the impugned order is of March 2024, I am of the view that no purpose would be achieved by

sending the cheque for the opinion of the Forensic Expert except for delaying and protracting the trial.

8. In fact, in the impugned order, the learned Magistrate has considered all the legal and factual aspects, and there is no perversity or irregularity warranting an interference.

Accordingly, this CrI.M.C. is dismissed.