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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 17.03.2026*
Judgment pronounced on: 24.03.2026
Judgment uploaded on: 24.03.2026

\+ **CRL.M.C. 7928/2024**

YASIV@YASIR ZAIDI .....Petitioner

Through: Mr. Pulkit Agarwal, Mr. Anubhav Lamba and Mr. Shubham Singh, Advocates

versus

MAN MOHAN ARORA .....Respondent

Through: Mr. Dipanshu Krishan, Mr. Karan Batura, Mr. Anmol Srivastava and Ms. Tanvi Sapra, Advocates

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of the present petition, the petitioner seeks setting aside of the impugned judgment dated 07.09.2024, passed by the learned Additional Sessions Judge, Saket Court, South-East District, New Delhi [hereafter '*Sessions Court*'] in Criminal Revision No. 243/2024, whereby the order dated 08.04.2024 passed by the learned

Metropolitan Magistrate, Saket Court, New Delhi [hereafter '*Trial Court*'] in CC No. 2644/2017 was upheld.

FACTUAL BACKGROUND

2. Briefly stated, the respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 [hereafter '*NI Act*'] against the petitioner, alleging that the petitioner had obtained a loan of ₹24,00,000/- from the respondent in September, 2016, repayable within one month. Towards partial discharge of the said liability, the petitioner is stated to have issued a cheque bearing no. 001929 dated 13.11.2016, drawn on ICICI Bank Ltd., Mohan Cooperative Industrial Estate, Mathura Road Branch, New Delhi, for an amount of ₹6,00,000/-. It is the case of the respondent that, upon the petitioner seeking time on account of financial difficulties, the cheque was initially not presented; however, after waiting for about three months, the same was presented on 13.01.2017. The cheque was dishonoured for the reason '*Insufficient Funds*', as per the cheque return memo dated 13.01.2017 issued by HDFC Bank. Thereafter, a legal notice dated 10.02.2017 was issued by the respondent to the petitioner, which, as per the respondent, was duly served on 11.02.2017. Since the amount remained unpaid, the respondent instituted the complaint under Section 138 of the NI Act.

3. The learned Trial Court, *vide* order dated 19.07.2017, summoned the petitioner. The petitioner entered appearance through

counsel on 11.10.2018. Thereafter, on 25.02.2019, notice under Section 251 of Cr.P.C. was framed and the plea of the petitioner was recorded, wherein he stated as under:

> "Q1 Was the dishonored cheque issued by you?
>
> Ans. No. The cheque in question does not bear my signatures and the other particulars therein have not been filled by me.
>
> ***
>
> Q4 Do you want to say anything else?
>
> Ans. Yes. I had introduced some clients to the complainant and he had some business dealings directly with the said persons. The complainant suffered some loss in the same and now he wants to recover the said loss from me. The cheque in question was lying with the complainant in blank as I was earlier working as a partner with him which now have been misused. Total 5 cheques were with the complainant of which 4 have been misused till now. I have nothing to pay to the complainant and this is a false case."

4. On the same date, an oral request made by the petitioner under Section 145(2) of the NI Act was allowed, and the matter was listed for cross-examination of the complainant on 04.07.2019. However, on several dates thereafter, adjournments or exemptions were sought on behalf of the petitioner, resulting in the complainant not being cross-examined. Consequently, *vide* order dated 10.03.2023, the right of the petitioner to cross-examine the respondent was closed, with a direction that in the event of failure to lead defence evidence, the matter would proceed to final arguments. Aggrieved thereby, the petitioner preferred a revision petition (CR No. 191/2023), which

came to be dismissed by the learned Sessions Court *vide* order dated 26.07.2023.

5. Thereafter, *vide* order dated 16.08.2023, the matter was listed for defence evidence. On 08.04.2024, the petitioner led defence evidence and examined DW-1, the Branch Manager of ICICI Bank, who produced the specimen signatures of the petitioner. At that stage, the learned counsel for the petitioner made an oral request before the learned Trial Court to send the disputed signatures along with the specimen signatures to the FSL for examination and comparison. The said request, however, was declined by the learned Trial Court *vide* order dated 08.04.2024, whereafter the defence evidence was closed and the matter was adjourned for final arguments.

6. In the meantime, the aforesaid order dated 08.04.2024 was challenged before the learned Sessions Court by way of Criminal Revision No. 243/2024; however, the same was dismissed *vide* the impugned judgment dated 07.09.2024. It was, however, directed that since the statement of the accused under Section 313 of Cr.P.C. had not been recorded prior to the stage of defence evidence, the same be first recorded by the learned Trial Court.

7. Aggrieved thereby, the petitioner has preferred the present petition before this Court.

SUBMISSIONS BEFORE THE COURT

8. The learned counsel appearing for the petitioner submits that the impugned judgment dated 07.09.2024 passed by the learned Sessions Court is legally unsustainable, as it fails to appreciate that the core issue in the present case pertains to the alleged forgery of signatures on the cheque, which cannot be conclusively determined without a comparative forensic examination by the FSL or by a qualified handwriting expert. It is argued that the mere production of specimen signatures by DW-1 is insufficient in the absence of expert analysis, and the refusal to permit such examination violates the principles of natural justice and deprives the petitioner of a fair opportunity to substantiate his defence. It is further submitted that the petitioner has consistently disputed the genuineness of the signatures from the inception of the proceedings, including at the stage of framing of notice under Section 251 Cr.P.C., and thus, the plea cannot be said to be belated or dilatory. The rejection of the request on the ground of delay is stated to be erroneous, particularly when no conclusive finding has been returned by either the learned Trial Court or the learned Sessions Court regarding the genuineness of the signatures. It is also argued that the petitioner was denied the right to cross-examine CW-1, thereby prejudicing his ability to challenge the signatures, and even DW-1, the concerned bank manager, has not deposed conclusively as to their genuineness. It is contended that a prima facie comparison of the disputed signatures on the cheque with the admitted signatures reveals material dissimilarities. The learned counsel further

submits that under Section 243(2) Cr.P.C., the accused is entitled to seek expert examination unless such a request is vexatious or intended to delay the proceedings, which is not the case herein. It is argued that the denial of this right is contrary to the law laid down in ***T. Nagappa v. Y.R. Muralidhar:*** *(2008) 5 SCC 633* and ***Kalyani Baskar v. M.S. Sampoornam:*** *(2007) 2 SCC 258*, and amounts to denial of a fair trial under Article 21 of the Constitution of India. It is, therefore, contended that the impugned judgment results in grave prejudice to the petitioner and leads to a miscarriage of justice.

9. On the other hand, the learned counsel appearing for the respondent submits that the petitioner has been delaying the trial since its inception by repeatedly seeking adjournments and exemptions from personal appearance before the learned Trial Court. It is not disputed that the petitioner had raised an objection at the stage of notice under Section 251 Cr.P.C. to the effect that the signatures on the cheque were not his; however, no formal application was filed at that stage, nor even at the stage of defence evidence, seeking examination of the signatures by the FSL. Instead, only an oral request was made by the learned counsel for the petitioner, which was rightly rejected by the learned Trial Court. It is further contended that although DW-1, the Branch Manager of ICICI Bank, was examined at the instance of the petitioner, no question regarding the authenticity of the signatures on the cheque was put to him. It is also submitted that the cheque in question was dishonoured on account of "insufficient funds" and not

due to any mismatch of signatures. The learned counsel further argues that the conduct of the petitioner, as reflected from the proceedings before the learned Trial Court, clearly demonstrates a pattern of deliberate delay. It is pointed out that the petitioner has also failed to appear for recording of his statement under Section 313 Cr.P.C., despite being directed to do so by the learned Sessions Court in the impugned judgment and in the absence of any stay granted by this Court. Consequently, non-bailable warrants dated 26.02.2026 have been issued against him. In view of the aforesaid, it is prayed that the present petition be dismissed.

10. This Court has **heard** arguments addressed by the learned counsel for the petitioner and learned counsel for the respondent, and has perused the material on record.

ANALYSIS & FINDINGS

11. The limited question that arises for consideration in the present petition is whether the learned Trial Court erred in declining the petitioner's request to send the cheque in question, along with admitted signatures, for forensic examination by the FSL, and whether the learned Sessions Court was justified in upholding the said refusal.

12. It is, therefore, pertinent to first take note of the order dated 08.04.2024 passed by the learned Trial Court. The record reveals that after the examination of DW-1, the learned counsel for the accused/petitioner had made an oral request seeking examination of

the cheque in question by the FSL with respect to the disputed signatures, along with comparison with the admitted signatures produced from the bank. The said request came to be rejected by the learned Trial Court by observing as under:

> "DW-1 Sh. Anshul jain, Bank Manager ICICI Bank, Mohan Cooperative Industrial Estate Branch has been examined-in-chief, crossexamination is treated as nil despite opportunity given and discharged.
>
> Diet money Rs. 1,000/- paid to the DW-l on behalf of accused.
>
> Previous cost Rs. 2,000/- is paid on behalf of the accused to the complainant.
>
> It is submitted by the Ld. Counsel for accused that steps are to be taken for getting the cheque in question examined from the FSL qua the questioned signature on the cheque as well as the admitted signatures of the accused produced from the bank. Heard both sides.
>
> The reason for dishonour of the cheque in question is "Insufficient Funds". Further, right to cross-examine: the complainant on behalf of the accused was closed by the Court as despite several opportunities given to the accused, no steps were taken to conduct the cross-examination of the complainant, therefore, statement under Section 313 Cr.P.C. was not recorded of the accused by the Ld. Predecessor on 10.03.2023. Expert evidence is only opinion evidence and the questioned as well as admitted signatures are already available on the record for ready comparison by the court.
>
> Accordingly, this court is not inclined to give opportunity to lead expert evidence from FSL to the accused.
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> Since, no list of defence witnesses has been filed nor any application under Section 315 Cr.P.c. has been filed on behalf of the accused.
>
> **Accordingly, DE stands closed.**"

13. The learned Sessions Court, while concurring with the view taken by the learned Trial Court, observed as under:

> "6. Admittedly, the accused is facing prosecution u/s 138 Negotiable Instruments Act for the dishonour of a cheque worth Rs. 6 lacs. Admittedly, the said cheque was dishonoured for want of "Sufficient Funds". Accused has admitted, in his statement recorded u/s 251 Cr.P.C., that the said cheque belongs to him but he denies that the same bears his signatures. Admittedly, the accused did not cross-examine complainant despite availing an opportunity u/s 145(2) Negotiable Instruments Act at the relevant time. The same implies that the oral testimony of complainant has gone unchallenged and unrebutted qua all the aspects mentioned in his affidavit. Admittedly, the accused moved an application for summoning defence witnesses, whereby he got summoned the records of his Bank in order to prove his specimen signatures. Admittedly, the accused did not make any prayer in his said application regarding forwarding of the cheque in question to FSL. Admittedly, the accused made only an oral prayer before the Ld. Magistrate to forward the cheque in question to FSL. The above facts reflect that the accused was merely trying to buy some more time by making said prayer. Be that as it may, in view of the observations made by Hon'ble Apex Court in ***L.G. Goyal Vs. Suresh Joshi and Drs. (1999) 3 Supreme Court Cases 376***, the revision petition could not be allowed."

14. At the outset, it is not in dispute that at the stage of framing of notice under Section 251 of the Cr.P.C. on 25.02.2019, the petitioner did take a specific plea that the cheque in question did not bear his signatures and that the particulars therein had not been filled in by him.

15. However, ***firstly***, the subsequent conduct of the petitioner/accused during the stage of complainant's evidence is of considerable significance. The record reveals that the matter was first

fixed for cross-examination of the complainant on 04.07.2019, and thereafter continued to be listed on several dates including 16.09.2019, 24.01.2020, 06.08.2020, 06.10.2020, 20.11.2020, 01.02.2021, 10.11.2021, 28.03.2022, 12.05.2022, 27.07.2022, and 16.12.2022. Despite the matter being repeatedly listed for this purpose over a span of nearly four years, the petitioner failed to cross-examine the complainant. On several of these dates, the petitioner either remained absent or sought adjournments, and even when present through counsel, the opportunity was not availed.

16. The order dated 10.03.2023 passed by the learned Trial Court records that despite grant of a last opportunity, the learned counsel for the petitioner did not appear and an adjournment was sought on behalf of the petitioner. The learned Trial Court, after noting the past conduct of the petitioner, observed that it appeared that the petitioner was not desirous of cross-examining the complainant and accordingly closed the opportunity for complainant's evidence. Relevant portion of the order dated 10.03.2023 passed by the learned Trial Court is extracted below:

> "Case is fixed for cross-examination of complainant but despite last opportunity the opportunity for cross-examination is not availed. Perusal of the record shows that notice was framed in Feb, 2019 thereafter, the case was posted for CE. On 4.7.2019, 16.9.2019, 24.1.2020, 06.8.2020, 06.10.2020, 20.11.2020, 01.02.2021, 10.11.2021, 28.03.2022 accused remained failed to appear before the court and even on 12.05.2022 case was fixed for CE and cost of Rs.5000/- was imposed on the accused and next date was fixed for 27.7.2022.

> On 16.12.2022, case was fixed for cross-examination of complainant but on behalf of accused adjournment was sought due to non-availability of counsel last opportunity was granted for today but today also counsel for accused has not appeared and accused seeks an adjournment. It seems that accused is not desirous to avail a cross-examination of complainant. Therefore, C.E. is closed."

17. The order dated 10.03.2023 was thereafter assailed by the petitioner before the learned Sessions Court by way of Criminal Revision No. 191/2023. The learned Sessions Court, *vide* order dated 26.07.2023, after examining the Trial Court record, specifically noted that the complaint pertained to the year 2017, that the petitioner had appeared in October 2018, and that since February 2019 the matter had remained at the stage of recording complainant's evidence. It was further observed that despite more than 15 opportunities over a period exceeding four years, the petitioner had failed to cross-examine the complainant. The learned Sessions Court also took note of the fact that even after imposing costs, the petitioner neither complied with the directions nor availed the opportunity, which clearly indicated a lack of diligence and seriousness in the conduct of the proceedings. In this regard, the order 26.07.2023 passed by the learned Sessions Court reads as under:

> "6. Perusal of the trial court record shows that the complaint case under Section l38 of the Negotiable Instruments Act is of the year 2017. Thus, it is a six years old matter. The revisionist/accused was ordered to be summoned vide order dated 19.07.2017 by the learned Trial Court. Subsequently, it appears that accused appeared through his counsel in the trial

> court on 11.10.2018 and his exemption was taken by his counsel. Thereafter, again NBWs were issued against the ,accused as he absented himself. Subsequently, on 25.02.2019, accused appeared and took the bail and since 2019, the matter is fixed for the cross-examination of the witness of the complainant.
>
> 7. The counsel for the respondent I complainant argues that about 15 opportunities were granted but either the revisionist did not appear or if he appeared through his counsel he did not crossexamine the complainant. Perusal of the trial court record shows that the observations of the trial court bear force as more than 04 years and more than 15 opportunities were granted to the revisionist to cross-examine the witness of the complainant / complainant but despite opportunity being granted again and again he did not crossexamine the complainant. Even on 12.05.2022, a cost of Rs.5,000/- was also imposed upon the revisionist but neither he paid the cost nor cross-examined the complainant. It seems that revisionist herein / accused therein has scant respect for the orders of the court and with impunity, he is not only flouting the orders of the court but when an order closing his opportunity to cross-examine the complainant has been passed by the court he has filed this revision petition."

18. It is also an admitted position that the order dated 26.07.2023 passed by the learned Sessions Court was not challenged any further before this Court and, therefore, the same attained finality.

19. In this factual backdrop, the contention raised on behalf of the petitioner that he was deprived of an opportunity to question the complainant by closing his right to cross-examine him, particularly with regard to the signatures on the cheque, is clearly unmerited, inasmuch as the record demonstrates that ample and repeated opportunities were granted to the petitioner over a considerable period

of time for conducting cross-examination of the complainant, which he failed to avail.

20. ***Secondly***, it is material to note that admittedly, the petitioner had moved an application for summoning his bank records in order to bring on record his specimen signatures, at the time of leading defence evidence. Pursuant thereto, DW-1, i.e., the Branch Manager, ICICI Bank, Mohan Cooperative Industrial Estate Branch, was examined on 08.04.2024. The said witness produced the admitted/specimen signatures of the petitioner under the seal and signature of the Deputy Branch Manager of the bank, and the same were taken on record.

21. At this stage, this Court notes that the Hon'ble Supreme Court in ***Ajitsinh Chehuji Rathod v. State of Gujarat & Anr.:*** *(2024) 4 SCC 453*, has observed that where an accused disputes the signatures on a cheque, it is open to him to procure certified copies of his specimen signatures from the bank and to summon the concerned bank official in defence, so as to question him regarding the genuineness or otherwise of the signatures appearing on the cheque. The Hon'ble Supreme Court has further clarified that where such an opportunity is available, but the accused fails to put any question to the bank official in this regard, the Court is not required to step in to assist the accused in collecting defence evidence, as the burden to rebut the statutory presumptions lies upon the accused himself. The observations of the Supreme Court in this regard are set out below:

> "**14**. Certified copy of a document issued by a Bank is itself admissible under the Bankers' Books Evidence Act, 1891 without any formal proof thereof. **Hence, in an appropriate case, the certified copy of the specimen signature maintained by the Bank can be procured with a request to the Court to compare the same with the signature appearing on the cheque by exercising powers under Section 73 of the Indian Evidence Act, 1872.**
>
> **15**. Thus, we are of the view that **if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque.**
>
> **16**. However, **despite having opportunity, the accused appellant did not put any question to the bank official examined in defence for establishing his plea of purported mismatch of signature on the cheque in question and hence, we are of the firm opinion that the appellate Court was not required to come to the aid and assistance of the appellant for collecting defence evidence at his behest.** The presumptions under the NI Act albeit rebuttable operate in favour of the complainant. Hence, it is for the accused to rebut such presumptions by leading appropriate defence evidence and the Court cannot be expected to assist the accused to collect evidence on his behalf."
>
> (Emphasis added)

22. In the present case, though the petitioner had taken the initial step of summoning the bank record and examining DW-1, the said opportunity was not meaningfully utilised by him. The testimony of DW-1 is extracted hereunder:

> "I have brought the admitted signatures of the accused Yasiv Zaidi under the seal and signature of the Dy. Branch Manager,

> ICiCI Bank pertaining to account no. 135701510052 maintained at ICICI Bank, Mohan Co-operative Branch which is Ex.OWI/I having the signatures of the accused at pOint "AU. The original Ex.OWl/l Is taken on record in CC No. 2644/2017 whereas the photocopies of Ex.DW1/1 are taken on record in CC no. 2645/2017, 2646/2017 and 2647/2017."

23. A perusal of the same shows that no question whatsoever was put to DW-1 by the learned counsel for the petitioner/accused with respect to the authenticity or otherwise of the signatures on the cheque in question vis-à-vis the specimen signatures produced from the bank. In this Court's opinion, once such a defence had been taken by the petitioner, and the bank official was available in the witness box along with the relevant record, it was incumbent upon the petitioner to confront the witness on this aspect, as held by the Hon'ble Supreme Court in ***Ajitsinh Chehuji Rathod v. State of Gujarat*** *(supra)*; *however*, no such effort was made by him.

24. The contention now sought to be raised on behalf of the petitioner that DW-1 did not depose conclusively regarding the signatures on the cheque cannot be appreciated, as the record itself reflects that no question in this regard was put to DW-1. The petitioner, therefore, had the opportunity to utilise the evidence of the bank official to support his defence, but chose not to do so.

25. ***Thirdly***, concededly, the cheque in question was dishonoured on the ground of "*Insufficient Funds*" and not on account of any mismatch of signatures. A Coordinate Bench of this Court, in ***S. Minz***

v. Madhu Bala Gupta: *2012 SCC OnLine Del 2936,* while relying upon the decision of the Hon'ble Supreme Court in ***L.C. Goyal v. Suresh Joshi:*** *(1999) 3 SCC 376,* has observed that where a cheque is dishonoured due to insufficiency of funds, and not on account of signature mismatch, reference of the disputed signatures to a handwriting expert may not be warranted. In such circumstances, the most relevant and competent witness would be the concerned Bank Manager. The relevant portion of the decision reads as under:

> "**6**. In view of the facts and circumstances of the present case, I am in agreement with the observations of the learned MM. **The bank had not disputed the signatures of the petitioner on the cheque. The cheques were dishonored due to insufficiency of funds in the account of petitioner. The judgment of *kalyani Bhaskar* (Supra) is clearly distinguishable from the present case, as in that case the bank manager, during cross-examination had clearly stated that the signatures on the cheque had not been verified by the bank at the time of dishonor of the cheque. No such statement has been made by the bank official in his examination before the learned MM.** Further in the case of *P.R. Ramakrishnan* (Supra), the Madras High Court had allowed the petition for verification of signatures on cheque on the facts of that case, as the reasons given by the trial Court for dismissing the application of the petitioner for verification of the signature, was delay in filing of the application, which was not considered justified. The learned MM in the present case has given sufficient and cogent reasons for dismissing the application of the petitioner.
>
> **7**. In the case of *L.C. Goyal* (Supra) the Supreme Court observed in para (8) of its judgment observed as under:
>
> > "The complainant alleged that when the appellant realized that the complainant has come to know that he has misappropriated a sum of Rs. 25,491, he gave a cheque for a sum of Rs. 38,000 which is Ext.C-4. The said cheque was drawn on UCO Bank and the same was deposited in the

> Central Bank of India in the account of Union, viz., Siemens' Employees Union, New Delhi. But the said cheque was dishonored due to insufficient funds. The appellant denied his signature on Ext. C-4 and contended that his signature was forged by the complainant. It is in this context that it was urged before the Bar Council of India that some handwriting expert be examined in order to find out the genuineness of the signature on Ext. C-4. As stated above, the cheque bounced not on account of the fact that the signature on Ext. C-4 was not tallying with the specimen signature of the appellant kept with the Bank, but on account of insufficient funds. **Had the signature on Ext. C-4 been different, the bank would have returned the same with the remark that the signature on Ext. C-4 was not tallying with the appellant's specimen signature kept with the bank. The memos Ext. C-6 and Ext. C-8 issued by the bank clearly show that signature of the appellant on Ext, C-4 was not objected to by the bank, but the same was returned with the remark "insufficient fund". This circumstance shows that the signature on Ext. C-4 was that of the appellant."**

8. In the case of *Manda Syamsundra* v. *Kurella Anjaneyachari* 2009 (1) DCR 726, the Andhra Pradesh High Court relied upon the case of *HM Satish* v. *B.N. Ashok* 2007 (3) Crimes 502 and *L.C. Goyal* (supra) and held thus;

> "**In the light of the above decisions and in the light of the return of the cheque not on the ground of signature not tallying, no purpose will be served in sending the document to the handwriting expert and there are no grounds to interfere with the order of the lower Court.**"

9. This Court recently in the case of *Kashi Ram Bansal* (supra) also relied upon the decision of *L.C. Goyal*(supra) and **held that in the case of denial of signature by the drawer of a cheque, the best witness would be the concerned Bank Manager and not a handwriting expert.**

10. In view of the above observations, I find no infirmity with the order of the learned MM. Hence the petition is dismissed."

(Emphasis added)

26. Thus, on this ground also, this Court is of the view that the petitioner had sufficient opportunity to question the Bank Manager regarding the authenticity of the signatures on the cheque, particularly when the said witness was examined as DW-1 at his own instance. The petitioner, being fully aware of his defence that the signatures were forged, had every occasion to put relevant questions to the Bank Manager on this aspect. However, despite such opportunity, no suggestion or question was put to the witness concerning the genuineness of the signatures.

27. ***Fourthly***, before this Court, it has been argued on behalf of the petitioner that the request for sending the cheque/signatures for forensic examination should have been allowed in view of Section 243(2) of the Cr.P.C., and in this regard, reliance has been placed on decisions in ***T. Nagappa v. Y.R. Muralidhar*** *(supra)* and ***Kalyani Baskar v. M.S. Sampoornam*** *(supra).*

28. In this regard, this Court notes that Section 243(2) of Cr.P.C. provides as under:

> "**243. Evidence for defence.—**
>
> (1) x x x
>
> (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...”

29. Thus, the Court, at the stage of defence evidence, is empowered to issue process for compelling the attendance of any witness or for production of any document or other material, upon an application made by the accused. The provision, however, clearly contemplates the filing of a formal application, and further vests discretion in the Court to reject such an application by recording reasons, where it appears that the application is vexatious, intended to cause delay, or is otherwise aimed at defeating the ends of justice.

30. In the present case, it is material to note that no such application under Section 243(2) of the Cr.P.C. was ever filed by the petitioner before the learned Trial Court. The record reflects that only an oral request was made seeking reference of the cheque/signatures to the FSL. Thus, the very foundation for invoking Section 243(2) of the Cr.P.C. is absent. It is further noted by this Court that the judgments relied upon by the petitioner were rendered in cases where specific applications under Section 243 of the Cr.P.C. had been filed and were adjudicated upon. The said decisions, therefore, do not advance the case of the petitioner in the present factual matrix, where no such application was ever moved.

31. Even otherwise, assuming that the oral request of the petitioner in this regard is to be considered, it is well settled, as held by the Hon'ble Supreme Court in ***T. Nagappa v. Y.R. Muralidhar*** *(supra)*, that the Court, being the master of proceedings, must assess whether such a request is *bona fide* and whether the evidence sought to be brought on record is relevant, and ensure that the accused is not allowed to unnecessarily protract the trial. Further, to reiterate, Section 243(2) of Cr.P.C. itself provides that Court can reject a request where it appears that the same is vexatious, intended to cause delay, or is otherwise aimed at defeating the ends of justice.

32. Tested on the touchstone of the aforesaid principles, this Court finds that the request made by the petitioner was clearly intended to cause delay in the present proceedings. The petitioner was fully aware of his defence – that he had not put the signatures on the cheque in question. Despite being fully aware of his defence, the petitioner failed to avail the opportunity to cross-examine the complainant on this aspect, and as noted in preceding discussion, the matter remained at the stage of complainant's evidence for a considerable period, however, the petitioner did not avail the said opportunity, and his right to cross-examine the complainant ultimately stood closed. Further, when the Bank Manager was examined as DW-1 at the instance of the petitioner himself, no question whatsoever was put to the said witness regarding the alleged discrepancy in signatures. Additionally, as already noted, the cheque in question had been dishonoured on

account of "Insufficient Funds" and not due to any signature mismatch. In these circumstances, the belated oral request made before the learned Trial Court, without even filing a formal application, appears to be an attempt to delay the proceedings rather than to bring any material evidence on record.

33. ***Lastly***, this Court is of the view that Section 73 of the Indian Evidence Act, 1872 empowers the Court to ascertain whether a signature, writing, or seal has been made by the person by whom it purports to have been made. For this purpose, the Court is competent to compare the disputed signature, writing, or seal with any signature, writing, or seal admitted or proved to the satisfaction of the Court to be that of such person, even if the same has not been produced or proved for any other purpose. The reasoning recorded by the learned Trial Court indicates that it was inclined to exercise the powers vested in it under Section 73 of the Indian Evidence Act, as the order dated 08.04.2024 records that both the admitted signatures as well as the disputed signatures were already on record for ready comparison by the Court.

34. In view of the aforesaid discussion, this Court finds no infirmity in the impugned order dated 07.09.2024 passed by the learned Sessions Court and order dated 08.04.2024 passed by the learned Trial Court, inasmuch as the cheque in question was dishonoured on account of "*Insufficient Funds*" and not due to any signature

mismatch, the petitioner failed to avail several opportunities to cross-examine the complainant despite the matter remaining pending at the stage of complainant's evidence for a period of about four years, no questions were put to the Bank Manager (DW-1) on the aspect of alleged forgery of signatures, no application under Section 243(2) of the Cr.P.C. was ever filed and only a belated oral request was made, which appears to be intended to delay the proceedings, and in any event, the learned Trial Court is well within its powers under Section 73 of the Indian Evidence Act to compare the admitted and disputed signatures already on record, and *accordingly*, the impugned orders are upheld.

35. In view thereof, the present petition is dismissed. Pending application, if any, is also disposed of as infructuous.

36. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

37. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MARCH 24, 2026
TD/rb