Delhi High Court Ravi Chopra vs State And Anr. on 13 March, 2008 Author: S Muralidhar Bench: S Muralidhar ORDER S. Muralidhar, J. 1. These petitions under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seek to challenge an order dated 18th July, 2006 passed by the learned Metropolitan Magistrate ('MM') rejecting an application filed by the Petitioner for sending the dishonoured cheques, in respect of which the complaint cases were filed against the Petitioner for the offences under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'), to the Central Forensic Science Laboratory ('CFSL') for its opinion on the handwriting on the cheques. 2. The cheques in question are Nos. 836720, 445534 and 752076 all dated 1st May, 2004 for a sum of Rs. 1 lakh each in respect of which Complaint Case No. 339 of 2004 was filed, Nos. 328114 dated 11th May, 2004 for a sum of Rs. 2 lakhs and No. 520660 dated 11th May, 2004 for a sum of Rs. 1 lakh in respect of which Complaint Case No. 340 of 2004 was filed, and Nos. 752064 and 555267 both dated 7th May, 2004 for a sum of Rs. 1 lakh each in respect of which Complaint Case No. 341 of 2004 was filed. The aggregate sum of all these cheques is Rs. 8 lakhs. The case of the complainant is that on different dates from 2000 to 2003 the Petitioner accused took a loan of Rs. 8 lakhs and issued the aforementioned cheques towards his liability for repayment of the loans. All the cheques were drawn on Punjab National Bank ('PNB'), Tolstoy House, New Delhi. Some of the cheques when presented returned dishonoured with the remarks "account closed" and some others on the ground "funds insufficient". Despite the complainant sending notices demanding payment, the Petitioner did not make payment within the statutory period. 3. At the trial after the complainant's evidence was recorded the petitioner examined himself as a defense witness and filed an affidavit by way of examination-in-chief. The stand taken in his affidavit was that the Petitioner was working as an officer in PNB. He was introduced to the complainant in the year 1997 by the brother-in-law of the complainant who was a colleague of the Petitioner at PNB. It is stated that Petitioner's brother Mr. Rajesh Chopra was in a real estate business at that point in time. The complainant, on coming to know this, expressed his desire to invest money in the real estate business. Therefore the petitioner introduced the complainant to his brother Mr.Rajesh Chopra. It is stated that during the period 1997-98 the complainant invested the aforementioned sum in the real estate business of his brother and it was agreed that the invested money would be repaid shortly. The complainant then insisted upon the Petitioner here standing surety for his brother. It is stated that pursuant to this request, the Petitioner issued the aforementioned cheques from his staff account at the PNB leaving blanks in the material particulars i.e. "without filling name, date and crossing". It is also the case of the Petitioner here that "the complainant also obtained 3 letters from the deponent having the dates left blank for receiving the said amount of these loans and cheques were issued on the assurance that the cheques and loans would be returned once the amount is paid to the complainant." It is claimed by the Petitioner that a sum of Rs. 4 lakhs was repaid in the last week of October 2000 to the complainant and when he was asked to return the cheques and letters he was assured that it would be sent to the Petitioner in due course and that the Petitioner trusted

him to do so. A further sum of Rs. 1 lakh was repaid in January 2001 after the Petitioner took a voluntary retirement from PNB in December 2000. It is stated that despite several efforts the Petitioner was unable to get the complainant to return the blank cheques. 4. It is claimed by the petitioner that the complainant had filed the aforementioned three complaints after filling the name of the payee, the date and crossing the cheques. It is alleged that the complainant also filled the date of the cheques in the letters with malafide and dishonest intentions. The Petitioner claimed that after taking voluntary retirement, he closed his staff account with the PNB on 21st March 2001. Further he changed his signature in his saving bank account with Bank of Baroda, Mayur Vihar Phase-III Branch. 5. On the basis of these allegations the accused filed an application in each of the aforementioned complaints on 3rd April, 2006 seeking reference of the cheques to the CFSL for opinion on the handwriting therein claiming that "the report of CFSL experts will falsify the entire case of the complainant filed to harass the deponent to extort money from him." The prayer in the application was that the cheques and letters in question should be sent to the CFSL "to seek scientific report and on insertion of name and address". 6. By an order dated 31st August 2006 the learned MM dismissed the application holding as under: Even if it is presumed that the name and date in the cheque was filed by the complainant himself even in that case also there is no need for sending the cheque in dispute to CFSL for expert opinion as the signature on the cheques is admitted by the applicant/accused and he has further admitted that these cheques were issued to the complainant in discharge of his liability. In view of the discussion made above, I am of the view that there is no need for sending the cheques in question to CFSL for expert opinion as no cogent and sufficient ground has been shown by the applicant/accused. Accordingly the application moved by the applicant is dismissed being without any merit. 7. By an order dated 29th August 2006 this Court, while directing notice to issue in these petitions, ordered that the trial court will not pass a final order. That interim order has continued till date. 8. The submission of Mr. Sudhir Nandrajog, learned Counsel for the Petitioners is that the purpose of seeking the reference of the cheques in question to the CFSL for expert opinion on the handwriting was mainly to probablise the Petitioner's defense in the trial which was to the effect that by the time the cheques were presented for payment, the petitioner had discharged the liability. While the petitioner does not dispute his signatures on the cheques, it is claimed that the material particulars i.e. the date, the name of the payee and the amount in words and figures have all been subsequently filled up by the complainant before presenting the cheques for payment. In other words it could be shown that the cheques were filled up on a date subsequent to the period between 1997 and 2001 by which time the entire liability had been extinguished. This could be shown by testing the ink to ascertain the time when the signatures were appended and the material particulars were filled up. Also, it could be shown that the handwriting of both was different. In turn, it would show that what was handed over to the complainant by the petitioner was not a 'cheque' within the meaning of Section 138 NI Act, i.e. a complete cheque with no blanks. 9. Mr. Nandrajog implores the Court to appreciate that the entire evidence was

in the control of the complainant and there was no way, without the assistance of the court, the petitioner can expect to bring on record evidence by way of defense. It was finally urged that with a view to dispelling the impression that the petitioner was seeking to delay the completion of the trial and in order to demonstrate his bonafides, the petitioner was willing to deposit in this Court the entire sum of Rs. 8 lakhs and was willing to let the money be paid to complainant if the opinion of the handwriting expert did not substantiate the defense of the petitioner. 10. Reliance is placed by counsel for the petitioner upon the judgment of this Court in BPDL Investments (Pvt.) Ltd. v. Maple Leaf Trading International (Pvt.) Ltd. to contend that if there are material alterations in the cheque then such an instrument is rendered void and could not have been presented for payment to the bank. Reliance is also placed on the decision of the Supreme Court in Kalyani Baskar v. M.S. Sampoornam to contend that every possible assistance should be offered by the court when an accused in a complaint case seeks directions to refer a disputed cheque for the opinion of a handwriting expert. It is submitted that in the said case the Supreme Court held that where a cheque was doubted as to its authenticity, the trial court ought not to refuse the request of the accused sending it for the opinion of the expert. 11. Ms. Amrit Kaur Oberoi, learned Counsel appearing for the Respondent No. 2 points out that these proceedings are an attempt to somehow delay the matter after the entire evidence has been recorded by the trial court. She further points out that the accused himself has been examined and in his reply he admitted that he has issued the cheques in favor of the Respondents and also sent the covering letters enclosing the cheques in question. She further points out that for the purposes of Section 138 NI Act all that is to be seen is that the cheque was validly signed by the drawer. According to her that Section imposes a 'no fault liability' on the drawer if it is shown that the drawer had signed the cheque and if other conditions indicated in that Section were fulfillled. She supports the impugned order of the learned MM as being justified in the facts and circumstances. 12. The first part of Section 138 NI Act indicates that there are two essential ingredients that have to be present in order to attract the offence under Section 138 NI Act. The first is that the cheque ought to have been 'drawn' by the drawer in favor of the payee on an account with a bank. As regards this ingredient, the petitioner submits that the cheques were signed by him but they were incomplete instruments since they did not contain the material particulars. In fact, in the form they were handed over to the complainant, they were not cheques in the sense of the term as contemplated by the NI Act. 13. The second ingredient is that the issuance of the cheque must be in total or partial discharge of the liability owed by the drawer to the payee. This has to be seen also in the light of Section 139 NI Act which states that "it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability." As regards this ingredient, the complainant contends that the cheques were issued towards the repayment of the loan borrowed by the Petitioner. The Petitioner however disputes that and states that there was no liability to be discharged by the Petitioner by the

time the cheques were presented for payment. What requires to be noticed in addition is that even according to the Petitioner, although he purports to have closed his account with the PNB in March 2001 itself, he admittedly did not inform the complainant of this fact or that he had ceased to be in service with the PNB since March 2001. The question of referring, disputed cheques for the opinion of the CFSL has to be understood in the above background. 14. The word "cheque" has been inclusively defined under Section 6 NI Act to include a 'bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. . . ". The words"bill of exchange" have been defined in Section 5 NI Act as "an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument." The expression 'negotiable instrument' has been defined in Section 13 NI Act as meaning a "promissory note, bill of exchange or cheque payable either to order or to bearer." 15. What appears to be clear from the above definitions that an essential feature of a cheque is that it has to be signed by the maker. This signing of the cheque need not be by hand alone. After the amendment to Section 6 in 2002, the NI Act acknowledges that there can be an electronic cheque which can be "generated, written and signed in a secure system." Nevertheless, the signing of the cheque is indeed an essential feature. But what about the other material particulars? Can the word "cheque" occurring in Section 138 NI Act include a blank cheque which is signed by the drawer but the material particulars of which are left unfilled at the time it was handed over to the payee? While on the one hand Section 138 NI Act which contemplates a 'no fault liability' has to be strictly construed as regard the basic ingredients which have to be shown to exist, it requires examination of the other provisions of the NI Act in order to ascertain if a cheque that was signed but left blank can, if the material particulars are subsequently filled up and presented for payment, still attract the same liability. 16. The counsel for the petitioner contended that a cheque which is signed but left blank at the time of such signing, will be materially altered if it is subsequently filled up without the consent of the drawer, which according to him is what has happened in the present case. Such cheque would be void in terms of Section 87 of the NI Act and therefore cannot be presented for payment or honoured even if it is. Section 87 NI Act reads as under: Section 87 - Effect of material alteration Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; Alteration by indorsee.– And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of Sections 20, 49, 86 and 125. 17. While it is correct that in terms of the above provision, any material alteration to a cheque without the consent of the drawer unless it is made to carry out the common intention of the original parties thereto renders the cheque void, the expression "material alteration" has not been defined. Significantly, Section 87 has been made subject to Sections 20, 49, 86 and 125 NI Act. These provisions help us

to understand what are not considered 'material alterations' for the purpose of Section 87. 18. Section 20 NI Act talks of "inchoate stamped instruments" and states that if a person signs and delivers a paper stamped in accordance with the law and "either wholly blank or have written thereon an incomplete negotiable instrument" such person 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." Section 49 permits the holder of a negotiable instrument endorsed in blank to fill up the said instrument "by writing upon the endorsement, a direction to pay any other person as endorsee and to complete the endorsement into a blank cheque, it makes it clear that by doing that the holder does not thereby incurred the responsibility of an endorser." Likewise Section 86 states that where the holder acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent has not been obtained to such acceptance would stand discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. Section 125 NI Act permits the holder of an uncrossed cheque to cross it and that would not render the cheque invalid for the purposes of presentation for payment. These provisions indicate that under the scheme of the NI Act an incomplete cheque which is subsequently filled up as to the name, date and amount is not rendered void only because it was so done after the cheque was signed and delivered to the holder in due course. 19. The above provisions have to be read together with Section 118 NI Act which sets out various presumptions as to negotiable instruments. The presumption is of consideration, as to date, as to time of acceptance, as to transfer, as to endorsement, as to stamp. The only exception to this is provided in proviso to Section 118 which reads as under: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him. 20. A collective reading of the above provisions shows that even under the scheme of the NI Act it is possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the drawee. There is no provision in the NI Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constituting a 'material alteration' for the purposes of Section 87 NI Act. What however is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the maker, that would be a material alteration. Therefore as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled up is different from the ink of the signature is not a material alteration for the purposes of Section 87 NI

Act. 21. The position in law has been explained in the judgment of the Division Bench of the Kerala High Court in Lillykutty v. Lawrance 2003 (2) DCR 610 in the following words: In the instant case, signature is admitted. According to the drawer of the cheque, amount and the name has been written not by the drawer but by somebody else or by the payee and tried to get it encashed. We are of the view, by putting the amount and the name there is no material alteration on the cheque under Section 87 of the Negotiable Instruments Act. In fact there is no alteration but only adding the amount and the date. There is no rule in banking business that payee's name as well as the amount should be written by drawer himself. In the instant case Bank has never found that the cheque was tampered with or forged or there is material alteration or that the handwriting by which the payee's name and the amount was written was differed. The Bank was willing to honour the cheques if sufficient funds were there in the account of the drawer even if the payee's name and the amount was written by somebody else other than the holder of the account or the drawer of the cheque. The mere fact that the payee's name and the amount shown are not in the handwriting of the drawer does not invalidate the cheque. No law provides in the case of cheques the entire body has to be written by the drawer only. What is material is the signature of the drawer and not the body of the instrument. Therefore when the drawer has issued the cheque whether the entire body was written by the drawer written beyond the instructions of the drawer, whether the amount is due or not, those and such matters are defenses which drawer has to raise and prove it. Therefore the mere fact that the payee's name and the amount shown in the cheque are in different handwriting is not a reason for not honouring the cheque by the Bank. Banks would normally see whether the instrument is that of the drawer and the cheque has been signed by the drawer himself. The burden is therefore entirely on the drawer of the cheque to establish that the date, amount and the payee's name are written by somebody else without the knowledge and consent of the drawer. In the instant case, the drawer of the cheque has not discharged and burden. Apart from the interested testimony of the drawer, no independent evidence was adduced to discharge the burden. 7. Defendant had set up a case that the two cheques were taken away from her establishment. Burden is on here to show that the two cheques were taken away from her business premises. Apart from the intested testimony of the defendant there is no other independent evidence adduced to establish the story that cheques were stolen from her business premises. Defend ant has not cared to examine any of the employees of the establishment. Counsel appearing for the defendant placed considerable reliance on the decision of this Court in Gandgadhara Panicker v. Haridasan 1989)2) KLT 730 and the contended that the presumption under Section 118 of the Act would arise only when there is a negotiable instrument which is admitted to have been executed. It is pointed out that when the fact of execution of the cheque itself is in dispute plaintiff has to prove also passing of consideration. In other words, only when due exe cution has been established presumption under Sectin 118 (a) can be raised. Reference was also made to the decision of the Mysore High Court in Gurubasappa v. Rudriah AIR 1969 Mys. 269. We are of the view, in a given case cheque is

issued by the drawer in favor of the payee and the same is dishonoured by the drawer's Bank stating "funds insufficient", holder of the cheque is entitled to get the amount as reflected in the cheque since the cheque is a negotiable instrument as per Section 118. We are of the view under Section 118 of the Act until the contrary is proved presumption can be made that every negotiable instrument was made for consideration. The expression "until the contrary is proved" is relevant under Section 118 of the Negotiable Instrument Act. When the drawer of the cheque did not find any infirmity in the cheque presented by the payee presumption raised under Section 118 would apply unless the contrary is proved by the drawer of the cheque. Therefore mere fact that the payee's name and the amount shown in the cheque Is not in the handwriting of the drawer of the cheque that by itself is not a ground to contend that they are not validly issued or the cheques were not executed at all. 22. Earlier in K.C. Devassia, St. Joseph's Chity Fund, Kaithavana v. Subramanian Potti II (1996) CCR 106 a learned Single Judge of the Kerala High Court came to the same conclusion by observing in para 5 as under: The revision is filed against the order dismissing the application filed by the accused for sending the disputed cheque to a Hand Writing Expert and obtain his report. The contention raised by the revision petitioner before me is that a blank cheque was handed over to the complainant as security for the transaction between the two and the cheque was subsequently filled up by the complainant. Counsel adds that filling up of the cheques by the complainant will amount to a material alteration coming within the purview of Section 87 of the Act. When a blank cheque is given, the payee can fill it up as he is empowered to do so under Section 20 of the Act. Filling up of the blank cheque by the payee is different from committing a material alteration. No material alteration except the fact that the blank cheque which was handed over by the accused to the complainant was filled up by him is alleged to invoke the provisions of Section 87. Counsel relied on the decisions reported in Loonkaran Sethia v. Ivan E. John AIR 1977 SC 366, Subba Reddy v. Neelapareddi AIR 1966 SC 267, Rattan Lal & Co. v. Assessing Authority Patiala and Jayantilal Goel v. Zubeda Khanun to contend that a material alteration makes the instrument void and unenforceable. I have no quarrel regarding the proposition laid down in the above decisions. But as already stated, a material alteration is different from filling up a blank cheque by the payee. 23. Recently this Court in Jaipal Singh Rana v. Swaraj Pal Singh (order dated 22nd February, 2008 in Crl. M.C. 7821/2006) after discussing the law on the topic, held that in a case involving the offence under Section 138 NI Act, the Magistrate would be justified in declining to refer the cheques for opinion of the handwriting expert where the signatures of the drawer on the cheque were not disputed by the drawer. The situation is no different as far as the present case is concerned. It may be added here that there may be good reasons for not dishonouring a cheque merely because the ink of the signature and ink of the material particulars is different or that the handwriting is different. Numerous situations can be thought of where the handwriting and the ink can differ. For instance when an entire cheque is typed as to its material particulars, and the signature is in the handwriting of the drawer, such cheque can hardly be said

to be void for that reason. 24. This Court is unable to accept the contention of the petitioner that if the signatures on the cheques are shown to be much prior to the date of filling up of the material particulars that would probablise the defense of the Petitioner. That the signature on the cheques is that of the petitioner is not disputed. The Petitioner has even in his cross-examination in fact admitted the fact that the cheques were issued by him and were handed over to the complainant along with a covering letter. For the reasons explained it matters little if the name of the payee, date and amount are filled up at a subsequent point in time, subject of course to what is stated in the proviso to Section 118 NI Act. 25. It is also not possible to agree with the contention that the determination of the time when the signature was appended will somehow explain the fact that the Petitioner has discharged the entire liability even before the cheque was presented for payment. Here two factors need to be noticed. The first is that although the Petitioner claims that he has closed his account in 2001 itself and that these blank cheques were handed over to the complainant prior to that, he did not write to the complainant informing the complainant that the account had been closed. Secondly, although he claimed that he has discharged the liability, admittedly this is only an oral assertion of the Petitioner and no receipts evidencing the payment of Rs. 8 lakhs have been produced in the court. It is pointed out by learned Counsel for the Respondent No. 2 that at the stage of framing of charge, the Petitioner had claimed before the trial court that he had with him the receipts evidencing repayment. However, till date no such receipt has been produced. The burden will be on the accused to show that in fact he has discharged the liability even prior to the presentation of the cheques for payment. That cannot be proved by the report of a handwriting expert. Section 139 NI Act which raises a rebuttable presumption in this behalf, would require some other positive evidence to be led by the accused to show that he has repaid the amount to the complainant. In other words, merely because there is a CFSL report that shows that the handwriting, the ink and the time of filling the material particulars is different from that of the signatures, that by itself will not go to prove that the accused has discharged his liability towards the complainant even before the date of the presentation of the cheques. For these reasons, there is no merit in the prayer of the petitioner for sending the cheques to the CFSL for the opinion of the handwriting expert. 26.1 Since much reliance was placed on the judgment in Kalyani Baskar, the facts in the said case may be noticed first. In para 2 it is stated that the accused there had raised a preliminary objection that she "has not signed the cheque or issued it to the complainant respondent." This is a major distinguishing feature of the said decision in its application to the facts of the present case where the accused is not disputing his signatures on the cheques. The observations in para 12 of the said decision have therefore to be understood in the above factual context. Since an essential ingredient of Section 138 is the signature of the drawer on the cheque, the trial court there could not have denied the accused the chance to prove that defense. The defense of denial of signatures naturally required the opinion of the handwriting expert. 26.2 In para 12 of Kalyani Baskar, after noticing the above facts, the Supreme Court held as under: 12. Section

243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence friable 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 handwriting 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 handwriting expert has deprived the appellant of an opportunity of rebutting it. The 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" included fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defense 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 the court 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 CrPC 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) CrPC refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defense. The appellant in this case requests for sending the cheque in question, for the opinion of the handwriting 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. 26.3 It was submitted that since the Supreme Court has held that the document should be sent for comparison by a handwriting expert to enable the Magistrate to compare the "disputed signature or writing with the admitted writing or signature of the accused. . . " not only the cheque but also the letter ought to have been referred for opinion of the handwriting expert. As already noticed, the accused in the above case was denying her signature on the cheque. The question of referring any other document in the form of a letter for the opinion of a handwriting expert clearly did not arise on the facts of that case. Where the accused facing the trial for the offence under Section 138 is disputing the signature on the cheque itself, then this is a permissible defense within the scope of Section 138 NI Act. In fact an accused facing trial for this offence has a very limited range of defenses to adopt. One is to show that the signature on the cheque is not that of the accused. The other is to show that there is no outstanding towards payment of the debt. While the former can be proved through the evidence of an handwriting expert, the latter cannot possibly be proved in that manner. The decision in Kalyani Baskar is

not of assistance to the petitioner. 26.4 An extensive reference was made to the judgment of this Court in BPDL Investments (Pvt.) Ltd.which arose in the context of a summary suit in which an application for leave to defense was being considered. It was submitted in that case that two undated cheques had been issued by the defendant in favor of the plaintiff and before it was presented the date was filled up by the plaintiff and that this constituted a material alteration. Following the decision of the Andhra Pradesh High Court in Allampati Subba Reddy v. Neelapareddi , this Court held that there was no consent of the defendant to the alteration of the date and therefore in terms of Section 87 of the NI Act it was a material alteration. In the first place, this was not a case arising under Section 138 NI Act at all. Moreover, while adverting to Section 87 of the Act, the Court did not notice that the said Section was subject to Sections 20, 49, 86 and 125 NI Act. These provisions permit the holder in due course of a negotiable instrument to fill up the material particulars without the said instrument being rendered void. Section 87 contemplates an otherwise complete cheque which when presented for payment would be able to be honoured except for the material alteration. For instance there is an overwriting or cutting in the material particulars which has not been initialed by the drawer, then that would prevent the bank from passing the cheque for clearance. Therefore, this decision is also not of relevance to the facts on hand. 27. For all the aforementioned reasons, this Court finds no infirmity in the order of the learned MM declining to refer to the cheques for the opinion of the handwriting expert. The petitions are accordingly dismissed but in the circumstances with no order as to costs. The pending applications are disposed of.