

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-10-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 257 and 312 of 2015

A.Nasira Begum ..Petitioner in both revisions(Accused)

Versus

V.Husain Ahmed .. Respondent in
Crl.R.C.No.257/2015(Complainant)

Shankar .. Respondent in
Crl.R.C.No.312/2015(Complainant)

Criminal Revision Cases filed under Section 397 read with 401 of Cr.P.C. against the order of the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District, in C.M.P.Nos.4162 and 3845 of 2014 in C.C.Nos.71 and 62 of 2014, dated 09.03.2015, thereby, dismissing the petitions filed by the petitioner seeking to send Exs.P.1-Cheque Nos.370633 and 370634 respectively, dated 05.06.2014, along with her admitted signature for Handwriting Expert Opinion and consequently send Ex.P.1-Cheques for an expert opinion along with the admitted signature of the petitioner even before the cross-examination of the respondents/complainants.

For Petitioner : Ms.Narmadha Sampath
in both revisions सत्यमेव जयते

For Respondent : Mr.K.Selvaraj
in Crl.R.C.No.257/2015

For Respondent : No Appearance
in Crl.R.C.No.312/2015

COMMON ORDER

The petitioner is arrayed as accused in the cases in C.C.Nos.71 and 62 of 2014 for the offence under 138 of Negotiable Instruments Act. Alleging that the petitioner has not signed in the cheques and that she had already issued legal notices contending that the cheques were stolen from her, she had filed C.M.P.Nos.4162 and 3845 of 2014 in C.C.Nos.71 and 62 of 2014 before the Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District, seeking to compare the

signature found in Exs.P.1-Cheques along with her admitted signature to get the Handwriting Expert Opinion. But, the said petitions were dismissed by order dated 09.03.2015. Aggrieved against the same, the present revisions were filed by the accused.

2. The revision petitioner in both cases is one and the same and the specific stand by her is that the signature in the cheques is not that of her. She admits that the cheques belong to her, but, according to her, the cheques were stolen from her. According to the petitioner, how the cheques went to the hands of the respondents/complainants is not known to her. Further, when the cheques were presented in the bank for collection by the respondents, the same were returned by the Bank Manager on the ground that the signature in the cheques differ, therefore, the contention of the petitioner is that when the Bank Manager, who is the competent authority has stated that the signature in the cheques is not that of the petitioner, she has to prove in the manner known to law, hence, for rebuttal evidence, the petitioner has filed petitions under Section 47 of the Indian Evidence Act seeking to send the cheques for comparison of the signature found in the cheques along with the admitted signature to get the Handwriting Expert Opinion. But, the said petitions were dismissed. Against which, these Criminal Revision Cases are filed.

3.Ms.Narmadha Sampath, learned counsel for the petitioners would contend that already there are sufficient evidence available and because, the Bank Manager itself has stated that the signature in the cheques differ, for rebuttal evidence, the petitioner has filed the petitions before the Trial Court, but, that petitions were dismissed. She would rely on the judgment of the Hon'ble Apex Court reported in (2007) 2 Supreme Court Cases 258, Kalyani Baskar vs. M.S.Sampoornam, for the proposition that the petitioner is entitled to rebut the case and if the documents viz., the cheques on which the respondent has relied upon for initiating criminal proceedings against the petitioner would furnish good material for rebutting that case, the Court declining to send the document for the examination and opinion of the handwriting expert would deprive the petitioner of an opportunity of rebutting it, the petitioner 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. Relying on the said judgment, learned counsel would submit that in these cases, an opportunity has been denied to the petitioners, therefore, the present revisions.

4. Mr.K.Selvaraj, learned counsel appearing for the respondent in CrI.R.C.No.257 of 2015 would submit that the Trial Court has taken into consideration of the fact that once the Bank Manager has already stated that the signature in the cheques differ and therefore, before the examination of the Bank Manager, sending the cheques for comparing the signature found in the cheques along with the admitted signature of the

petitioner to get the Handwriting Expert Opinion for the sake of further evidence. He would further add that P.W.1 has already been examined in chief. He would further add that the petitioner can get along with the case and if the Bank Manager comes to the Court and say it is not the signature of the petitioner, on the basis of that, the Court can come to a conclusion and therefore, at this stage, there is no need for sending the cheques for comparison and to get an expert opinion.

5. There is no representation for the respondent in CrI.R.C.No.312 of 2015. The Hon'ble Apex Court in the decision reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court can decide the matter even in the absence of the parties or their counsel, but, only criteria is that the case should be decided on merits and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, the main Criminal Revision Cases are taken up and disposed of on merits, after hearing the learned counsel appearing for the petitioner in both revisions and also the learned counsel appearing for the respondent/complainant in CrI.R.C.No.257 of 2015 and also after perusing the materials available on record.

6. On a careful consideration of the entire materials available on record and also the arguments of both parties and the orders passed by the Court below, one thing is clear that the petitioner is a pardhashan lady, normally, she does not come out in a public place. It is the case of the petitioner that the signature in the cheques is not that of hers. The Bank Manager has returned the cheques on the ground that the signature in the cheques differ. Now, she goes one step further and says that since the bank has returned the cheques on the ground "Drawer Signature Differs" and to be on the safer side and for rebuttal evidence, as per Section 47 of Indian Evidence Act, she has filed petitions before the Trial Court seeking to send the cheques for comparison of the signature found in the cheques along with the admitted signature to get the Handwriting Expert Opinion to show that the signature in the cheques is not that of her. Actually, the accused is entitled to rebut the case, especially, if the documents viz., the cheques on which the complainants have relied upon for initiating criminal proceedings against the accused would furnish good material for rebutting the case and it is for the betterment of the accused. The Court should not decline to send the documents for the examination and to get the opinion of the handwriting expert, because, if declined, the accused would be deprived of an opportunity of rebutting it, the accused 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" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support in support of the defence is a valuable right. Denial of that right means denial of fair trial.

7. At what stage the petitioner/accused can be permitted to send the documents for examination is the question to be decided now. In the Trial Court, P.W.1 has been examined in chief and not even cross-examined. Taking into consideration of the fact that there is a denial of the signature by the Bank Manager himself, the petitioner/accused has come forward with the petitions before the Trial Court. The case is at the earliest stage of trial. Normally this Court will not interfere when the petitions have been filed at the belated stage or if the Court comes to a conclusion that the object of the accused is vexatious or it is a delaying tactics adopted by the accused to delay the criminal proceedings.

8. In the judgment relied upon by the learned counsel appearing for the petitioner reported in (2007) 2 Supreme Court Cases 258, Kalyani Baskar vs. M.S.Sampoornam, the Supreme Court has held in paragraph No.12 as follows:-

"12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable 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" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence 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 courts 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 defence. 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. "

Thus, in the above judgment, the Supreme Court has categorically held that the petitioner is entitled to rebut the case and if the documents viz., the cheques on which the complainant has relied upon for initiating criminal proceedings against the petitioner would furnish good material for rebutting that case, the Court declining to send the document for the examination and opinion of the handwriting expert would deprive the petitioner of an opportunity of rebutting it, the petitioner 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.

9. In the light of the judgment cited supra, this Court is of the clear view that an opportunity should be given to the accused and this Court cannot shut the doors at the earliest point of time, because, now admittedly P.W.1 has been examined in chief and he has not even been cross-examined. This Court taking into consideration the peculiar facts and circumstances of the case on hand, particularly, where the Bank Manager himself has returned the cheques on the ground that the "Drawer Signature Differs" and also the fact that it is the case of the petitioner that the signature in the cheques is not at all hers and the cheques itself were stolen prior to the occurrence. Hence, I am of the considered opinion that the orders passed by the Trial Court is not in accordance with law and hence, the orders of the Trial Court dated 09.03.2015 are liable to be set aside.

10. In the result, these Criminal Revision Cases are allowed. The orders of the Trial Court dated 09.03.2015 are set aside. The Trial Court is directed to send the Exs.P.1-Cheques for comparison of the signature found in the cheques along with the admitted signature of the accused found in the document viz., registered document or public document approved by the Court executed during the contemporaneous period and shall complete such exercise as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. Thereafter, the learned Additional District Munsif-Judicial Magistrate, Ambur, is directed to finish the trial of the case in C.C.Nos.71 and 62 of 2014, on merits and in accordance with law, as expeditiously as possible. Consequently, connected M.P.Nos.1 and 1 of 2015 are closed.

Sd/

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ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

paa

To

The Additional District Munsif
-cum-Judicial Magistrate,
Ambur, Vellore District.

+1 CC to MR.K.Selvamani Advocate. SR.NO. 58949

CrI.R.C. Nos. 257 and 312 of 2015