

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-10-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 675 of 2015

R.Jayanthi

... Petitioner

Versus

S.Shanthi

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order passed by the learned Judicial Magistrate, Tambaram, in CrI.M.P.No. 1671 of 2015 in C.C.No.453 of 2013, dated 02.06.2015 .

For Petitioner : Mr.S.Xavier Felix

For Respondent : Mr.V.Chandrankanthan

ORDER

The case of the respondent/complainant is that the petitioner/accused has borrowed a sum of Rs.6,00,000/- as hand loan agreeing to repay the same with interest at the rate of 24% per annum. On 10.01.2013, the petitioner/accused has issued a cheque for discharge of the debt. When the complainant presented the cheque for collection, the same was returned with an endorsement "Funds Insufficient". The complainant issued a statutory legal notice dated 02.04.2013 and a Corrigendum dated 24.04.2013. Though, the accused received both notices, neither she came forward to repay the cheque amount nor replied and hence, the complaint. The case was taken on file in C.C.No.453 of 2013 on the file of the Judicial Magistrate, Tambaram. During trial, the accused has filed CrI.M.P.No.1671 of 2015 on the file of the Judicial Magistrate, Tambaram, seeking to send the document to handwriting expert for comparison of signature and for obtaining expert opinion. The said petition was dismissed. Questioning the correctness of the order dated 02.06.2015 passed in CrI.M.P.No.1671 of 2015 on the file of the Judicial Magistrate, Tambaram, this Criminal Revision Case is filed by the accused.

2. Mr.S.Xavier Felix, learned counsel appearing for the petitioner/accused would mainly contend that the petitioner has not filled up the cheque, but, he admits the signature. He would further add that in the cross-examination, the complainant has categorically admitted that she has not filled up the cheque and therefore, if the cheque is not filled up either by the petitioner or the complainant, how the alleged amount, termed to be the amount due, came to be filled up in the cheque, hence, for rebuttal evidence, the petitioner seeks to send the cheque for expert opinion.

3. Mr.V.Chandrakanthan, learned counsel appearing for the respondent would contend that even if the cheque is sent to expert opinion, he can only seek the writings from the petitioner as well as the respondent and he can compare the writings with the cheque and thereafter, he can say as to whether it was written by the petitioner or the respondent and he cannot say, who wrote the cheque without a specific person being named or the comparison with his/her signature, therefore, the purpose of sending the cheque for expert opinion does not arise. He would further contend that it is a delaying tactics adopted by the petitioner/accused, therefore, the Trial Court has rightly dismissed the petition.

4. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

5. In my judgment reported in 2012 MLJ (Crl.) 586, Babu vs. Vinayagam, I have categorically held that insofar as to the cheque dishonour case is concerned, if the signature in the cheque is admitted by the petitioner, thereafter, he cannot say, who has to fill up the cheque. As per Section 20 of the Negotiable Instruments Act, a holder in due course is authorised or empowered to fill up an instrument so as to make it a negotiable instrument. In this case, the petitioner had admitted the entrustment of the cheque in blank to the complainant and therefore, the complainant as a holder in due course, is entitled to fill up the cheque and that cannot be questioned by the petitioner/accused. But, in this case, another peculiar circumstance has arisen. The petitioner/accused has stated that he has not filled up the cheque. The complainant also in his cross-examination has stated that he has not filled up the cheque. Under those circumstances, if the cheque is sent for comparison, even the expert can only seek the writings from the petitioner as well as the respondent and he can compare the writings with the cheque and thereafter, he can say as to whether it was written by the petitioner or the respondent and he cannot say, who wrote the cheque without a specific person being named or the comparison with his/her signature,

therefore, in my considered opinion, when it is the case of both the petitioner/accused and the respondent/complainant that they have not filled the amount in the cheque, no useful purpose would be served by sending the cheque to an expert for comparison and obtaining his opinion, it is for the Trial Court to decide.

6. The petitioner/accused admits the issuance of cheque and the signature. It is the case of both parties that the cheque was neither filled up by the petitioner/accused nor it was filled up by the respondent/complainant. In view of the evidence available, since, the issuance and signature in the cheque is admitted by the petitioner/accused, I do not find any reason to interfere with the reasoned order of the Trial Court, suffice to state that the cheque need not be sent for expert opinion and it is for the Trial Court to decide on the basis of the evidence and materials available on record.

7. This Criminal Revision Case is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

paa

To

1.The Judicial Magistrate,
Tambaram.

2.The Section Officer,
Criminal Section records,
High Court, Madras.

+1cc to Mr.V.Chandrakanthan, Advocate, S.R.No.55711

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2015

PPA(CO)
CA(23/11/2015)