IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No. 237 of 2009

Ramachandran .. Petitioner/Petitioner

Versus

Matheswari .. Respondent/Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure against the order dated 19.11.2008 passed in Crl.M.P. No. 1417 of 2008 in C.C. No. 13283 of 2004 on the file of VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr. S. Rajesh
For Respondent : Mr. S.T. Rajesh Murugan

ORDER

The respondent herein has filed C.C. No. 13283 of 2004 before the trial Court against the revision petitioner under Section 138 of The Negotiable Instruments Act as the cheque dated 20.09.2004 issued by the petitioner for Rs.25,000/- in favour of the respondent was dishonoured. When C.C. No. 13283 of 2004 was pending before the trial Court, the petitioner has filed Crl.M.P. No. 1417 of 2008 in C.C. No. 13283 of 2004 under Section 45 of The Indian Evidence Act praying the trial Court to send the disputed cheque dated 20.09.2004, marked as Ex.P1, to the expert for their opinion for verification of the signature in the cheque. The said petition was dismissed by the trial court against which the present Criminal Revision Case is filed.

2. The learned counsel appearing for the petitioiner would contend that petitioner and the husband of the respondent were employees of one and the same bank. During the course of such employment, the husband of the respondent has misused the cheque signed by the petitioner with a malafide intention and to grab money from the petitioner. Even before the dishonour of the cheque, the petitioner had complained to the higher officials regarding the conduct of the husband of the respondent and aggrieved over the same, the respondent has come forward with a complaint as though the petitioner borrowed money from her. There is no direct relationship between the petitioner and the respondent and only the husband of the respondent was employed with the petitioner. In such circumstances, the petitioner has filed the petition under Section 45 of the Indian Evidence Act to prove whether the signature in the cheque is that of the petitioner or it was forged. The trial court, without considering the nature and scope of such plea has erroneously dismissed the petition and therefore he prayed this Court to allow this Criminal Revision Case.

3. The learned counsel for the respondent would contend that the petitioner did not produce any document to show his admitted signature for the purpose of comparision of the signature in the disputed cheque. The trial court has therefore rightly concluded that as the petitioner has not produced any document, which could be compared with the signature found in the cheque, the petition under Section 45 of the Indian Evidence Act is not maintainable. According to the counsel for the respondent, the petition under Section 45 of the Indian Evidence Act has been filed to drag on the proceedings. Therefore, the trial court is right in refusing to entertain the petition filed under Section 45 of the Indian Evidence Act and he prayed for dismissal of the same.

4. I heard the counsel for both sides and perused the records made available, including the order passed by the trial court. Admittedly, the petitioner was employed in Indian Overseas Bank, Choolaimedu during the relevant time along with the husband of the respondent. The petitioner is not a layman. If the cheque in question is presumed to be forged or the signature in the cheque was made by any one other than the petitioner, then the bank ought not to have entertained the cheque and the cheque would have been returned for difference in the signature. The cheque was not returned by the bankers for difference in signature, but for want of funds. In other words, the cheque was entertained by the bank for disbursing the amount, but due to want of sufficient funds, it was returned unpaid. Notwithstanding the above, the petitioner has not issued a reply notice to the statutory notice sent by the respondent/complainant. The petitioner could have very well sent a reply and disputed the issuance of cheque at the earliest point of time, but he has not chosen to do so. Further, as rightly pointed out by the trial court, for the purpose of comparision of the signature in the cheque, the petitioner has not produced any document to show his admitted signature. It is also seen from the records that the petitioner has merely prayed the trial court to send the cheque in question to experts without producing any document to show his admitted signature for comparision. In such circumstance, the trial court is right in refusing to entertain the application filed under Section 45 of The Indian Evidence Act. I do not find any reason to interfere with the order passed by the court below.

5. It is seen from the records that the Cheque in question was issued by the petitioner on 20.09.2004 and the Calander Case is pending from 2004. The present petition has been filed by the petitioner under Section 45 of the Indian Evidence Act at the time when defence side evidence was in progress. Having regard to the above, the trial Court is directed to take the Calander Case on file and to dispose it of on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order. Accordingly, the Criminal Revision Case is dismissed.

sd/-
ASSISTANT REGISTRAR(J)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

rsh

To

1 The VII Metropolitan Magistrate
George Town, Chennai

2 Do thro the Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.S.T.Rajeshmurugan, Advocate Sr.16094 [4/11/2015]

Crl.R.C. No. 237 of 2009

CO-SR
JD 14/10/2015