

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.6.2015

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THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 984 of 2009

and

M.P. No. 1 of 2009

S.Kandasamy

.. Petitioner

Versus

Thirumoorthy

.. Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 10.3.2008 made in Crl.M.P. No. 4151 of 2007 in C.C.No.72 of 2007 on the file of Judicial Magistrate No.1, Erode.

For Petitioner : Mr.H.Rajasekar

ORDER

The petitioner has come forward with this Criminal Revision Petition questioning the correctness of the order dated 10.3.2008 passed by the Court below in Crl.M.P. No. 4151 of 2007 in C.C. No. 72 of 2007.

2. The petitioner is the accused in C.C. No. 72 of 2007 instituted by the respondent herein under Section 138 of the Negotiable Instruments Act. According to the respondent, the petitioner/accused borrowed a sum of Rs.50,000/- from him as hand loan on 20.8.2006 and in order to repay the same, he had issued the cheque dated 20.9.2006, which was dishonoured on its presentation. Hence, a statutory notice dated 16.10.2006 was issued to the petitioner. But the petitioner refused to receive the same. Therefore, the complaint under Section 138 of the Negotiable Instruments Act was filed by the respondent.

3. Pending C.C.No. 72 of 2007, the petitioner has taken out an application in Crl.M.P. No.4151 of 2007 under Section 45 of the Indian Evidence Act contending that he had not borrowed any amount from the complainant and that he had not issued any cheque as alleged and that there was a difference in the signature of the petitioner. Therefore, to find out the same, the age of the ink and other details in the cheque in dispute has to be ascertained through an expert. Hence, the petitioner prayed the court below to send the cheque in question to finger print experts specifically to ascertain the age of the signature or ink found mentioned in the cheque in question.

4. The Court below dismissed the CrI.M.P. No.4151 of 2007 holding that the petitioner has not disputed his signature at any time even at the time of examination of 313 (1) (A) and now after examination of witnesses on the side of the complainant, the present complaint has been preferred. The Court below also pointed out that the petitioner has not send any reply to the notice sent by the respondent disputing the issuance of the cheque. Therefore, the Court below found that the petition has been filed only to prolong the litigation and there is no bona fide in the contention urged on behalf of the petitioner. Accordingly, the Court below refused to grant the relief prayed for by the petitioner.

5. I have heard both sides and perused the records. The petitioner seeks to ascertain the age of the ink by seeking to send the cheque in question along with the admitted signature of the petitioner. Though the petitioner sought for such a prayer, he has not produced any relevant documents containing his signature so far. In other words, the petitioner seeks to ascertain the age of the ink by which the dates and amounts were filled in the cheque which cannot be done in view of the decision of this Court reported in (2010 (1) CTC 424, [R. Jagadeesan vs. N. Ayyasamy and another]. In that decision, this Court held that there is no such facility available in India, especially in Tamil Nadu to compare the age of the ink. In Para Nos. 7, 8 and 9, it was held as follows:-

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"7. In order to ascertain the correctness of the said statement, this Court had requested the learned Additional Public Prosecutor Mr. N.R. Elango to request either the Director or the Assistant Director, Document Division, Forensic Science Department, Chennai, to be present before this Court to explain the position. Accordingly, today, Mr. A.R. Mohan, Assistant Director, Document Division, Forensic Science Department, Government of Tamil Nadu, Chennai is kind enough to be present before this Court. According to him, he is the Head of the Document Division of the department. On a query made by this Court regarding the above position, he would explain to this Court that there is no scientific method available anywhere in this State, more particularly, in the Forensic Science Department, to scientifically assess the age of any writing and to offer opinion. However, he would submit that there is one institution known as Nutron Activation Analysis, BABC, Mumbai where there is facility to find out the approximate range of the time, during which the writings would have been made. It is a Central Government Organisation. According to him, even such opinion cannot be exact. He would further submit that since it is a Central Government Organisation and confined only to automic research, the documents relating to prosecutions and other litigations cannot be

sent to that institution also for the purpose of opinion. He would further submit that if a document is sent for comparison, with the available scientific knowledge, opinion to the extent as to whether the same could have been made an individual, by comparing his admitted handwritings or signatures, alone could be made. He would further submit that if there are writings with two different inks, in the same document, that can alone be found out. But he would be sure enough to say that the age of the writings cannot be found out at all to offer any opinion.

8. In view of the above clear and unambiguous statement made by no less a person than the Head of the Department of Forensic Science, I am of the view that the whole exercise adopted in various Courts in this State to send the disputed documents for opinion to the Forensic Department in respect of the age of the writings and the documents is only futile. If any document is so sent, certainly the department will say that no opinion could be offered. As a matter of fact, the Assistant Director would inform the Court that already many such documents, which were sent to them by various Courts in the State for such opinion, have been returned by them with the report that no such opinion could be offered.

9. In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due to scientific advancements, new methods are invented to find out the age of the writings."

(ii) It is worthwhile to refer to an unreported decision of this Court in Crl.R.C. (MD) No. 265 of 2012, dated 18.07.2012, which followed the judgment of this Court reported in 2010 (1) CTC 424, R.Jagadeesan vs. N.Ayyasamy and ultimately, it was held that the facility to ascertain the age of the ink of the signatures found in the cheques, is not available in Tamil Nadu and that earlier, the matters have been referred to Andhra Pradesh, in fact, now, a report has been sent by the Assistant Director, Central Forensic Laboratory, Andhra Pradesh to the effect that as of now, such facility is not available in India, therefore, there is no possibility to ascertain the age of the ink of the signatures found in the cheques. The relevant paragraphs in the unreported decision cited supra are extracted as hereunder:-

"12. After the said judgement, it appeared that the issue was almost settled. Once again, the very same question was raised before the

same learned single Judge [Justice S.Nagamuthu] in V.Makesan v. T.Dhanalakshmi, 2010 (1) Crimes 833: 2010 (1) LW (CrI) 879. The learned counsel, who appeared for the petitioner therein, had relied on the judgement of the Hon'ble Supreme Court in Union of India v. Jyoti Prakash, AIR 1971 SC 1093 wherein in paragraph 10 of the judgement, the Hon'ble Supreme Court has held as follows:-

"....

The learned senior counsel for the petitioner therein had also cited Yash Pal v. Kartar Singh, AIR 2003 P & H 344 wherein also similar view had been taken. Having considered all the above judgements, while rejecting the plea for sending the document for expert opinion, the learned Judge in paragraph 7 has held as follows:-

"7. A perusal of all the above judgements would go to clearly indicate that as of now, there is no expert in terms of Section 45 of the Indian Evidence Act available who could be in a position to offer any opinion regarding the age of the ink by adopting any scientific method. In view of all the above, I am inclined to interfere with the order of the learned Sessions Judge, Fast Track Court No.III, Coimbatore."

13. The very same question again cropped up for consideration before yet another learned single Judge [V.Periya Karuppiyah.J.,] in Indira Balasubramaniam and others v. S.Subash (C.R.P.NPD No.3082 of 2008 dated 17.08.2009) wherein the learned Judge in para 16 has held as follows:-

"16. In view of the judgement of this Court discussed earlier there would not be any purpose in sending the impugned cheques for examination to ascertain its age of the ink used for filling up its particulars and signatures put up therein. Therefore, the request of the petitioners to send the cheques through an Advocate Commissioner for Expert's opinion as to the age of the ink cannot be ordered since it does not result in any scientific accuracy. The lower Court had not discussed these points but correctly rejected the claim of the petitioners. Therefore, this Court is not inclined to interfere with the findings of the lower Court and accordingly, the Revision fails and the same is dismissed."

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18. After the said judgement, this Court is informed that a number of petitions were filed again in various court across the State for sending the disputed documents to Central Forensic Sciences Laboratory, Directorate of Forensic Sciences. According to the learned Judge though it may be true that there is no expert in the State, the learned Judge was informed that there was an expert in the Central Forensic Sciences Laboratory. It is because of this though the learned Judge had concurred with the view taken in R.Jagadeesan's case cited supra, had directed the document to be sent for examination in the said Laboratory.

20. Very recently, the President of Central Forensic Science Laboratory, Hyderabad, Andhra Pradesh State was invited to give a lecture in the Tamil Nadu State Judicial Academy at Chennai on the subject "disputed document". During the course of interaction, a question was posed to him - Is there any expert available for offering opinion regarding the age of the ink used for writing the disputed document? - In categorical terms, he informed that there is no such expert available not only in his Laboratory but in any Laboratory throughout the country at present and, therefore, it is not at all possible to offer any opinion regarding the age of the ink used in the disputed document. When a specific query was made during interaction to the President as to what had happened to the documents already sent to his Laboratory seeking such opinion, he said that the said documents were only returned without offering any opinion.

21. Now, in order to ascertain as to whether there is any expert really available in the said laboratory since the request is to send the disputed document to the said laboratory in Hyderabad, this Court through the Registrar called for remarks from the said laboratory in Hyderabad. The Assistant Director and Scientist 'C', Central Forensic Science Laboratory, Hyderabad, has given his remarks through fax message to this Court vide Ref. CFSL(H)DOC/MISC/2012-13 wherein he has stated as follows:-

"This is to submit that as there is no validated method, this laboratory does not undertake the examination for determining the relative/absolute age of the ink of the writings/signatures."

From the above fax message from the Central Forensic Science Laboratory, Hyderabad, it is crystal clear that there is no expert available in the said Laboratory also to offer any opinion regarding the age of the ink.

...

25. In this regard, we may come back to the judgement of Justice S.Nagamuthu in R.Jagadeesan's case cited supra, wherein it is not the view taken by the learned Judge that there is no scientific method available for ascertaining the age of the ink used for writing the disputed document. The learned Judge has only held that there is no expert available, who can scientifically examine the same. Even now, the learned Judge had ascertained from the Forensic Science Department, Government of Tamil Nadu, Chennai, that there is no expert, who can offer such opinion. Now, the Assistant Director, Central Forensic Laboratory, Hyderabad has also stated that there is no such expert available anywhere in India. Thus, it is crystal clear that, as of now, there is no expert available in India. In A.Sivagnana Pandian's case cited supra, Justice S.Palanivelu has stated that in Forensic Science it is possible to ascertain the age of the ink. Regarding such conclusion arrived at by the learned Judge, I have no different opinion. Science has developed so much and that it is possible. As per the leading books referred to by the learned Judge, there is a scientific method available. But, knowing a method alone would not serve the purpose to implement the method. Equipment's are necessary and person with the expertise knowledge is also necessary. If only there is a person who has special skill in the field who is armed with sufficient equipment's, then only he can use the known scientific method to offer his opinion. But, in respect of age of the ink though there are scientific method available in India, there is neither such scientific expert available nor equipment available. It is because of these reasons, I have to necessarily hold that for getting an opinion regarding the age of the ink, the disputed document cannot be sent anywhere as of now. I would make it clear that in future, if any expert emerges and equipment's are also made available, then, after identifying him, the court may forward the disputed documents to him for opinion. Until such time, the document cannot be sent anywhere for the purpose of getting opinion regarding the age of the ink used for writing

the disputed document."

(iii) Following the aforesaid judgments, this Court in the judgment reported in 2012(4)MLJ(Crl)586 [Babu vs. Vinayagam], held as follows:

"11. As far as comparison of age of the ink sought for by the petitioner/ accused by the forensic experts, such a prayer cannot be countenanced in view of the decision rendered by this Court in (R. Jagadeesan vs. N. Ayyasamy and another) (2010 (1) CTC 424 which was also followed by this Court in various other decisions including an unreported decision of this Court in Crl.R.C. (MD) No. 265 of 2012, dated 18.07.2012 wherein it was held that the facility to ascertain the age of the ink of the signatures found in the cheques, is not available in Tamil Nadu and that earlier, the matters have been referred to Andhra Pradesh, in fact, now, a report has been sent by the Assistant Director, Central Forensic Laboratory, Andhra Pradesh to the effect that as of now, such facility is not available in India, therefore, there is no possibility to ascertain the age of the ink of the signatures found in the cheques.

12. The court below pointed out that when the petitioner admitted his signature in the cheques as well as the promissory note, there is no necessity to send the cheques in question to forensic experts for comparison. Even in the reply given by the petitioner to the statutory notice sent by the respondent or during the course of trial, the petitioner/accused never disputed the execution or entrustment or issuance of the cheques and promissory notes in favour of the respondent/complainant and therefore, the Court below is right in dismissing the petition filed by the petitioner under Section 45 of the Indian Evidence Act. I am fully in agreement with the conclusion arrived at by the Court below and I do not find any reason to interfere with the same."

6. In the light of the decision of this Court, mentioned supra, the relief sought for by the petitioner cannot be granted. The Criminal Revision Case, is therefore, dismissed. However, it is open to the petitioner to let in evidence as are available to him to disprove the complaint filed by the respondent/complainant herein before the Court below. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (Judicial)

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Sub Asst. Registrar

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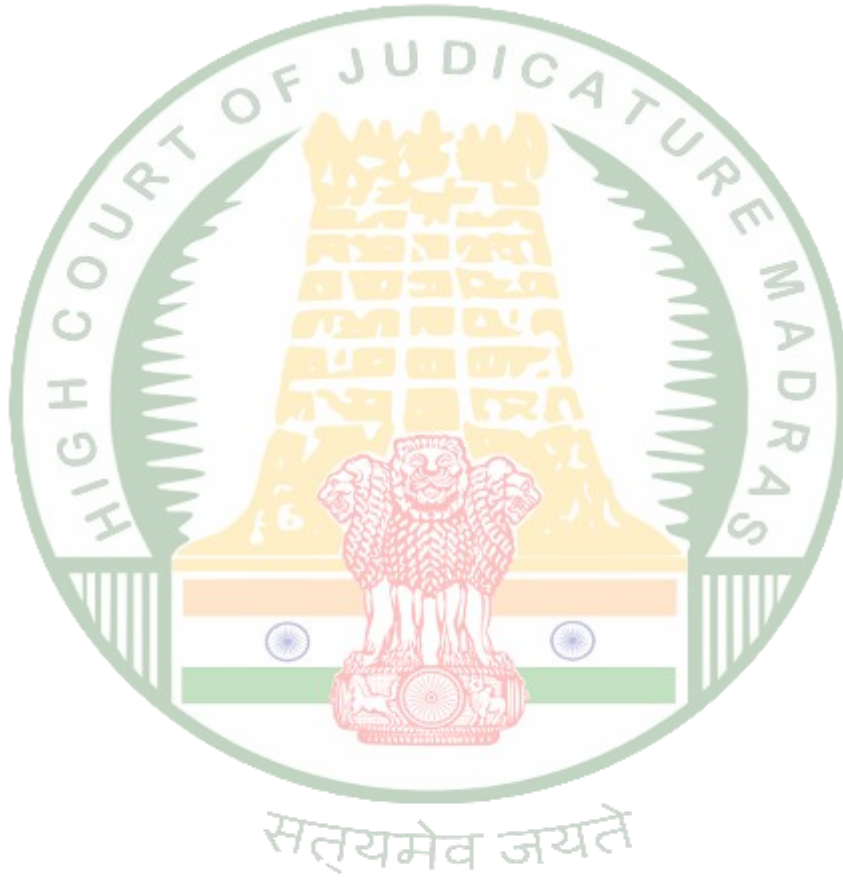
To

The Judicial Magistrate No.1, Erode

1 cc to M/s. H. Rajasekar, Advocate, sr. 31641

Cr1 RC No. 984 of 2009

MP (CO)
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