

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Cr1.O.P.No.23050 of 2009
and
M.P.No.1 of 2009

1.M/s.Mohan & Co.,
Venkateswara Sago Factory by its
Managing Partner, P.Mohan

2.P.Mohan
3.M.Jayanthi

...Petitioners

vs.

P.K.Subramaniam

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order dated 27.11.2008 made in C.M.P.No.1902 of 2008 in S.T.C.No.1383 of 2007 on the file of the Judicial Magistrate, Rasipuram, Namakkal District.

For Petitioners : Mr.T.Dhanyakumar

For Respondent : Mr.R.Karthikeyan

O R D E R

This petition is filed to set aside the order dated 27.11.2008 passed in C.M.P.No.1902 of 2008 in S.T.C.No.1383 of 2007 on the file of the Judicial Magistrate, Rasipuram, Namakkal District. The petitioners are the accused and the respondent filed private complaint under Section 138 of the Negotiable Instruments Act, 1881. The petitioners disputed the signature found in the cheque and to prove the same, the petitioners filed petition for production of specimen signature of the second petitioner from the bank on which the cheque was drawn and that petition was dismissed by the trial

Judge. Aggrieved by the same, this petition is filed.

2. The learned counsel for the petitioners submitted that the petitioners have denied the signature found in the cheque and in order to prove that the signature found in the cheque was not that of the second petitioner, the specimen signature found in the bank account of the second petitioner has to be summoned for comparison by an expert.

3. The learned counsel for the respondent submitted that the petitioners have not given the date on which the bank account was opened and in that case, the bank account summoned cannot be used for comparison and it is settled position of law that only contemporaneous document can be compared.

4. Even though the petitioners have not given the date on which bank account was opened, no prejudice would be caused to the respondent by summoning the specimen signature of the second petitioner found in the bank account opening form. Though the respondent has raised objection by stating that only contemporaneous document should be produced for comparing the signature, at this stage, the objection of the respondent cannot be accepted.

5. Hence, this Criminal Original Petition is allowed and the order dated 27.11.2008 made in C.M.P.No.1902 of 2008 in S.T.C.No.1383 of 2007 on the file of the Judicial Magistrate, Rasipuram, Namakkal District is set aside and the learned Magistrate is directed to summon the specimen signature found in the bank account within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jvm

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To

The Judicial Magistrate,
Rasipuram,
Namakkal District

1 CC to Mr.T.Dhanyakumar, Advocate SR.No. 15203

1 CC to Mr.R.Karthikeyan, Advocate SR.No. 15002

Crl.O.P.No.23050 of 2009
and M.P.No.1 of 2009

LRS (CO)
PSI (30.03.2015)



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