



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.03.2015**

CORAM:

THE HONOURABLE MR. JUSTICE **M. SATHYANARAYANAN**

CRL.RC. (MD) No.129 of 2015

and

M.P.Nos.1 and 2 of 2015

R.Nagappan Nair : Petitioner/Petitioner/Accused

Vs.

B.Chandramoni : Respondent/Respondent/Complainant

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in C.M.P.No.7425 of 2014 in S.T.C.No.676 of 2012, on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District and set aside the order dated 27.01.2015.

For Petitioner : Mr.A.Thiruvadikumar

O R D E R

The petitioner is the accused in S.T.C.No.676 of 2012, on the file of the Court of Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District. The respondent herein has filed the said complaint seeking to prosecute the petitioner herein for the commission of offence under Section 138 r/w Section 142 of the Negotiable Instruments Act, 1881, [for brevity, "the Act"], alleging that the revision petitioner/accused is his close friend and on 21.05.2012, he borrowed a sum of Rs.4,00,000/-, promising to repay the same within three months and he also issued a cheque for the said sum, dated 20.08.2012, drawn on State Bank of India, Thuckalay Branch. As per the instructions given by the revision petitioner/accused, the respondent/private complainant presented the cheque for encashment, on 24.08.2012 and it was returned with an endorsement "funds insufficient" and thereafter, the respondent/private complainant has issued a statutory notice, on 08.09.2012 and in response to the same, the revision petitioner/accused sent a reply, on 25.09.2012, stating among other things that he did not know the respondent/private complainant and the cheque in question has been given to one Bhaskaran, who is conducting K.B.N.Chit Fund, as a security for the chit amount bid by him and the said Bhaskaran has also instituted a suit in O.S.No.6 of 2012, on the file of the Sub-Court, Kuzhithurai, in which he wanted the revision petitioner/accused to give evidence and since it was refused, utilizing the services of the respondent/complainant, he has presented the cheque and thereafter, has filed the above said



false complaint. According to the respondent/complainant, the revision petitioner/accused did not repay the amount payable to him and hence, filed the above said complaint.

2. The trial of the case has commenced and the respondent/complainant has examined himself as PW-1 and in the cross-examination, it was suggested, among other things, that the signature found in the impugned cheque, marked as EX-P1, was made by using ink pen and the body of the cheque was filled by ball-point pen and he further denied that the date and the amount in the cheque came to be filed on different dates. Thereafter, the revision petitioner filed C.M.P.No.7425 of 2014, under Section 73 of the Indian Evidence Act, 1872, with the following prayer:-

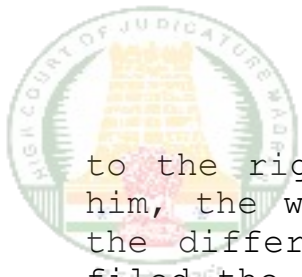
"1. Whether the age of signature in the cheque and the writing of name and amount in letters and date and numerals are of the same period of different period.

2. The age of signature in the cheque and the age of writing amount in words and numerals and the date in the cheque.

3. Whether the signature to the cheque and rest of the writings are by same pen and ink or different pen and ink."

3. The Trial Court, taking into consideration of the materials placed before it, has observed that PW-1 was examined, on 06.05.2013 and the accused has chosen to file petition, on 24.07.2014 and there is no explanation on the side of the accused as to why he did not take any steps to send the disputed cheque for getting expert opinion immediately after he entered appearance or at least immediately after the completion of examination of PW-1. The Trial Court has also concurred with the submission made by the learned counsel for the respondent/private complainant that even if the age of the ink in the disputed cheque is found out, it will not be, in any way, helpful to find out the exact date of the execution of the disputed cheque, because there is every possibility of usage of the old ink at a later point of time and hence, the disputed cheque alone will not be a criteria to find out the exact date of execution of the cheque and the Trial Court, by stating the said reasons, has dismissed the petition, vide impugned order dated 27.01.2015 and aggrieved by the same, the revision petitioner/accused has filed the present Criminal Revision Case.

4. Mr.A.Thiruvadikumar, learned counsel appearing for the petitioner, has invited the attention of this Court to the Judgment of the Hon'ble Supreme Court of India in **T.Nagappa Vs. Y.R.Muralidhar**, [2008 (2) SC [Cr1] 677], and would contend that the petitioner cannot seek the aid of Section 20 of the Act, for the reason that the said Act confers only a *prima facie* right upon the holder of the negotiable instrument and the same being subject



to the right of the accused to defend his case and according to him, the writings on the cheque were made by somebody else during the different periods and to establish the said defence, he has filed the said petition and the Trial Court, without appreciating the factual aspect and legal position, has erroneously dismissed the petition and prayed for interference.

5. This Court has carefully considered the rival submissions and perused the typed set of documents.

6. It is the settled position of law that there cannot be any legal bar to a Presiding Officer to compare the disputed writings and arriving at a finding. Prudence demands that the Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard. [**State of Maharashtra Vs. Sukhdeo Singh** [AIR 1992 SC 2100]. In **Muthuraj Vs. Ganesan**, [2013 (1) MLJ [Cr1] 656], a similar issue arose for consideration and this Court has taken into consideration of **T.Nagappa's** case, cited supra and also the decision rendered by this Court in **V.K.Gemini Vs. Chandran** [2007 Cr1.L.J 1285], and observed in Paragraph No.34, as follows:-

"34. It is to be remembered that the admission of the signature in the cheque/cheques alone will not prove the defence as per Section 138 of the Negotiable Instruments Act without proving the other ingredients. One such ingredient is that the cheque is drawn/has been drawn for 'Discharge of a Debt or other Liability'. To put it succinctly, whether the ingredients of Section 20 of the Negotiable Instruments Act are attracted as a matter of routine or automatically or to be gone into by the trial Court at the time of evidence being adduced by the parties in the main case (including the Petitioner/Accused as the case may be) before coming to the conclusion as to the applicability of Section 20 r/w. Section 118 of the Negotiable Instruments Act. In short, the main case S.T.C.No.32 of 2012 on the file of the trial Court is posted for evidence being let in on the side of the Petitioner/Accused. Also, he has been questioned under Section 313 of the Criminal Procedure Code. At that point of time only, the Petitioner/Accused has projected Cr.M.P.No.1728 of 2012. Further, the Petitioner/Accused has not projected favourable circumstances in his favour to allow Cr.M.P.No.1728 of 2012 in question, more so, in view of the observations of the Honourable Supreme Court in **UNION OF INDIA Vs. JYOTI PRAKASH MITTER** reported in AIR 1971 SC 1093 AT 1099-10-11-1990 as stated earlier and also in **Yash Pal V. Kartar Singh** reported in AIR 2003 Punjab and Haryana



344, wherein it is clearly stated that However, in the present case, such investigation is not likely to help to conclusively prove that the writing dated 11.2.1998 was infact recorded earlier because the age of the ink cannot be determined on the basis of writing." In any event, this Court comes to an inevitable conclusion that the Petitioner/Accused has projected Cr.M.P.No.1728 of 2012, after the closure of evidence on the side of the Respondent/Complainant and also after when he has been questioned under Section 313 of the Criminal Procedure Code etc., and therefore, it is pellucidly clear that only with a view to procrastinate the pending proceedings in S.T.C.No.32 of 2012 on the file of the trial Court, he has projected Cr.M.P.No.1728 of 2012 and viewed in that perspective, the order of dismissal passed by the trial Court in dismissing Cr.M.P.No.1728 of 2012 dated 27/9/2012, in the considered opinion of this Court, does not suffer from any material irregularity or patent illegality in the eye of Law. Consequently, the Criminal Revision Petition fails."

7. The revision petitioner may be under the impression that once he admits his signature in the cheque, the presumption would operate against him. It is the well settled position of law that if the complainant seeks to draw presumption under Section 139 of the Act, he is bound to establish the basis for drawing the presumption to the satisfaction of the Court and unless such fact is established, the Court shall not draw presumption in favour of the complainant.

8. In **R.Jagadeesan Vs. N.Ayyasamy and another [2010 (1) CTC 424]**, a single Bench of this Court, after summoning the services of the Head of the Department of Forensic Science and after hearing him and ascertaining his views, has found that such a kind of expertise is not available in the Country to find out the age of the document.

9. In the considered opinion of this Court, the defence projected by the revision petitioner/accused can be sustained by letting in evidence and the present Criminal Revision Case is misconceived. Therefore, the Criminal Revision Case is dismissed at the stage of admission itself. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)



To

The Judicial Magistrate No.I, Kuzhithurai,
Kanyakumari District.

+1cc to Mr.A.Thiruvadikumar, Advocate Sr.No.14661
nb
AA/08.04.2015/5p- 3c/

**ORDER MADE IN
CRL.RC. (MD) No.129 of 2015
DATED - 25.03.2015**