



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2015

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

Crl.R.C. (MD) Nos.17 and 19 of 2015

and

MP(MD) No.1 & 1 of 2015

T.K.Anitha

.. Revision Petitioner in both Petitions

Vs.

Arumai Jebadurai

.. Respondent in both petitions

Prayer in Crl.R.C.No.17: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., against the order dated 12.12.2014 passed in Cr.M.P.No.7793 of 2014 in C.C.No.22 of 2011 on the file of the District Munsif cum Judicial Magistrate, Boothapandy.

Prayer in Crl.R.C.No.19: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., against the order dated 12.12.2014 passed in Cr.M.P.No.7792 of 2014 in C.C.No.22 of 2011 on the file of the District Munsif cum Judicial Magistrate, Boothapandy.

For Petitioner

:: Mr.K.Sreekumaran Nair

COMMON ORDER

Both the revisions arising out of the orders passed in C.C.No.22 of 2011, vide order dated 12.12.2014, pending on the file of the Court of District Munsif cum Judicial Magistrate, Boothapandy, Kanyakumari District. Therefore, these revision petitions are disposed of by this common order.

2.The respondent herein filed a private complaint in C.C.No.22 of 2011 on the file of the Court of District Munsif cum Judicial Magistrate, Boothapandy, Kanyakumari District against the revision petitioner herein seeking a prosecution for the commission of offence under Section 138 read with Section 142(b) of the Negotiable Instruments Act.

3.It is the case of the respondent/complainant that he and the husband of the revision petitioner were close friends and the revision petitioner wanted to borrow some money from him and on her request, the revision petitioner came to his house on 05.09.2010 at 5.00 p.m. and received a sum of Rs.10 lakhs as a consideration. For receipt of the said amount, the revision petitioner/accused has filled up a cheque bearing No.255899 drawn on 06.12.2010 and the said cheque on presentation has dis-honoured due to insufficient funds. In this regard, the complainant sent a statutory notice, for which, the revision petitioner has not replied and since she has failed to pay the amount pursuant to the statutory notice, the complainant preferred a private complaint.



4. The examination of P.W.1/complainant was over and he has also recalled him for further examination. Thereafter, the revision petitioner/accused has filed Cr.M.P.No.7792 of 2014 for reopening the case and Cr.M.P.No.7793 of 2014 under Section 45 of the Indian Evidence Act for sending the cheque in question for expert opinion, as it is her case that she has never filled up the contents of the cheque and ink and handwriting also differs. Both petitions came to be dismissed by a separate orders dated 12.12.2014 and hence, these revisions.

5. Mr. K. Sreekumaran Nair, learned counsel appearing for the revision petitioner/accused, would vehemently contend that the revision petitioner/accused, at the earliest point of time in respect of the statutory notice, took a stand that she has not filled up the contents of the cheque and therefore, the averments made in the complaint that the complainant came to their house on 05.09.2010 and given a sum of Rs.10 lakhs as a consideration and for the receipt of the said amount, she herself has filled up the cheque in question and hand over the same, are false and therefore, there cannot be any impediment in sending the cheque for expert opinion and however, the trial Court, without citing any tenable reasons, has erroneously dismissed the petitions.

6. Insofar as the dismissal of the application for reopening, it is the submission of the learned counsel appearing for the revision petitioner that unless the case is reopened, the revision petitioner will not be in a position to probabalise her defence and therefore, prays for setting aside the impugned orders and allowing these revisions petitions.

7. This Court carefully considered the submissions of the learned counsel appearing for the revision petitioners and also perused the materials available on record in the form of typed set of papers.

8. As per the averments in the complaint, the cheque in question was filled up on 05.09.2010. However, it was given a post date on 06.12.2010. It is the specific case of the petitioner that though she admits her signature in the cheque, the contents of the cheque including the date have not been filled up by her and different inks have also been used to fill the cheques. It is pertinent to point out at this juncture that according to the complaint, the cheque in question came to be issued during September 2010 and it is her case that she will put her signature in the open Court and it may be sent for comparison. It is well settled position of law that comparison can be done only with regard to the 'Contemporaneous Signature' available at the relevant point of time and though it is contended by the revision petitioner that she will write something in her own handwriting before the Court in the year 2014-15, it can be sent for expert opinion, which in the considered opinion of the Court, is untenable. Therefore, this Court finds no merits in CrI.R.C.(MD) No.17 of 2015.

9. Insofar as the dismissal of Cr.M.P.No.7792 of 2014 for reopening the case, which is a subject matter available in C.C.No.22 of 2011, unless and until the cheque in question is sent for expert opinion and the report is received from the Forensic Department, no purpose will



be served in reopening the case and therefore, CrI.R.C.No.19 of 2015 also deserves dismissal.

10. In the result, both the revision petitions are dismissed at the admission stage itself. However, the revision petitioner/accused is at liberty to file one more application under Section 45 of the Indian Evidence Act by producing her 'Contemporaneous Signature' of the year, in which, the cheque in question was said to have been drawn. The trial Court on filing of the said application, shall dispose the same, as expeditiously as possible and in accordance with law. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Boothapandy.

+1cc to Mr.K.Sree Kumaran Nair,Advocate, SR.No.3427

CrI.R.C. (MD) Nos.17 and 19 of 2015
27.01.2015

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