

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.883 of 2011

and

M.P.No. 1 of 2011

Krishnasamy

... Petitioner/Accused

Vs.

Seethapathy

... Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the order made in C.M.P.No.2721/2010 in C.C.No.446/2008 dated 20.05.2011 on the file of the Judicial Magistrate No.I, Udumalpet, Coimbatore District and allow the criminal revision case.

For Petitioners : Mr.C.Veeraraghavan

O R D E R

The petitioner has filed this revision against the order of dismissal passed by the learned Judicial Magistrate No.1, Udumalpet, in C.M.P.No.2721 of 2010 in C.C.No.446 of 2008 dated 20.05.2011, in the application filed by the petitioner under Section 45 of Indian Evidence Act to send the cheque to handwriting expert for comparing the signature.

2. The respondent herein has filed a complaint under Section 138 of Negotiable Instruments Act on the ground that on 18.11.2007, the petitioner/accused has borrowed a sum of Rs.1,00,000/- for his personal expenses. On 22.06.2008, he issued a cheque dated 25.06.2008, for the repayment for the above loan. When the cheque was presented for collection, it was returned as "insufficient funds". Though the respondent issued a legal notice to the petitioner, neither he sent any reply nor repaid the amount.

3. After commencement of trial, the petitioner herein filed a petition in C.M.P.No.2721 of 2010 under Section 45 of Indian Evidence Act stating that the petitioner and the respondents are closely related, and the respondent herein has taken the cheque of the petitioner without his knowledge, forged the signature of the petitioner and filed a complaint and hence,

he wants to compare the signature in the cheque along with the signature found in the papers filed in the Court.

4. The learned Judicial Magistrate dismissed the said application stating that the petitioner has not raised any objection regarding the signature found in the cheque by way of reply notice and even at the time of questioning under Section 313 (1) (b) Cr.P.C. and after examination of P.W.1 in chief, the present application has been filed belatedly only to drag the proceedings. Challenging the same, the petitioner has filed the present revision.

5. Heard Mr.C.Veeraraghavan, learned counsel appearing for the petitioner .

6. As rightly held by the court below, the accused has not denied the signature found in the cheque from the beginning and only after commencement of trial, i.e. after examination of witnesses, he filed the application vaguely for comparing the signature found in the cheque along with the signature found in the documents filed in the court below. Even the petitioner has not specifically stated in which document his admitted signature is been found. If the petitioner claim is genuine, the petitioner ought to have filed documents of his admitted signature to compare his signature found in disputed cheque before the court. Without doing so, he wants to compare his signature found in the case papers and that too, without mentioning the specific document containing his admitted signature. Hence, there is no bonafide in the claim of the petitioner, hence this revision is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

mrp

To

1. The Judicial Magistrate No.1,
Udumalpet.

2. -do- Thro The Chief Judicial Magistrate, Coimbatore District.

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3. The Public Prosecutor, High court, Madras.

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