

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.650 of 2016
and Cr1.MP.Nos.4563 & 4564 of 2016

1.Garima Maheswari
2.Vittal Maheswari

.. Petitioners

Vs.

S.Mukanchand Bothra.
Represented by his Power Agent
M.Ganga Bothra.

.. Respondent

Prayer :-Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C.to call for the records in Cr.M.P.No.1397 of 2016 in C.C.No.3806 of 2013 on the file of Fast Track Court No.4, George Town Chennai and set aside the order dated 21.03.2016.

For Petitioners: Mr.C.V.Kumar.

For Respondent : Mr.Ganga Bothra
Party-in-person.

ORDER

The criminal revision petition is directed against the order passed by the learned Fast Track Court No.4, George Town, Chennai in Cr.MP.No.1397 of 2016 in CC.No.3806 of 2013 dated 21.03.2016.

2.It is admitted by both sides that the respondent in this revision petition filed the petition under Section 138 of the Negotiable Instruments Act and it is the case of the complainant that he was examined as PW1 and he was cross examined in the case and adjourned for further examination of witnesses. At this stage, the petitioners/accused filed Cr.MP.No.1397 of 2016 to send the documents for expert opinion and the same was dismissed by the trial Court, hence, the petitioners/accused are before this Court by way of present revision petition.

3.The learned counsel for the petitioners contended that the present petitioners borrowed a sum of Rs.21lakhs on various dates and issued post dated cheques by filling all the contents of the cheque, the complainant presented the cheque and the same

was dishonoured as payment stopped by the drawer. Subsequently, legal notice was issued by the complainant and initiated complaint against the petitioners. The learned counsel stated that at the time of borrowing a sum of Rs.6lakhs from the complainant, the petitioners issued blank signed cheques, pronotes to the complainant, thereafter, the complainant presented the cheque by filling the blanks with exorbitant amount and initiated false complaint against the petitioners. Hence, the petitioners seeks for forensic examination to identify the period of its hand writing along with the period of signature. The trial Court without application of mind, dismissed the petition and without following the dictum laid down by the Hon'ble Supreme Court in the judgments reported in 2007 (2) CTC 364 and 2014 (1) MWN (cr) DCC 34 (Mad). The learned counsel prays this Court to set aside the order of the trial Court on the ground for not following the procedure laid down by this Court in the above said judgments.

4.The respondent/party in person contended that the trial Court after perusal of the entire facts and circumstances, came to the correct conclusion and dismissed the petition. Further, it is contended that there is no mechanism available in India to find out the age of the Ink and there is no necessity to send the cheque for forensic opinion.

5.Further contended that, the cheque amount was not filled up by the accused and the complainant, but the other persons who accompanied along with the accused had filled up the cheque. In view of the above stated circumstances and to drag on the proceedings, the accused have filed the petitions and there is no irregularity or infirmity in the order of the trial Court and the revision petition filed by the petitioners/accused is liable to be dismissed.

6.Heard the rival submissions made on both sides and perused the records.

7.Admittedly, PW1 was examined and cross examined by the respondents/accused. Further, PW1 in the chief examination specifically admitted and stated that the cheque was filled up by the person who accompanied with the accused at that time, hence it is presumed the difference of hand writing in the cheque and also in the signature. This Court has already held in the CrI.RC.Nos.49, 50 and 984 of 2009 that there is no mechanism or validated method is available in India to find out the age of the Ink. It is also admitted on the side of the petitioners that there is no mechanism to find out the age of the Ink in India, therefore, it is improper on the part of the Court to send the cheque to the forensic department to find out

the age of the Ink in the cheque.

8.In this case, the complainant and the accused have not filled up the cheque, but it was filled up by the other persons who accompanied with the accused, hence there is no necessity to send the cheque for forensic department for verification of the hand writing and the age of the Ink in the cheque.

9.In view of the the above facts and circumstances, the learned Fast Track Court No.4, George Town, Chennai upon perusing the documents and after analysing the materials placed before the Court, dismissed the claim of the petitioners/accused in Cr.MP.No.1397 of 2016 on 21.03.2016. This court finds no illegality or infirmity in the order passed by the trial court and the same do not warrant any interference by this court.

10.In the result, the criminal revision petition stands dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Fast Track Court No.4, George Town Chennai.

1 cc to Mr.C.V.Kumar, Advocate, sr.35323

2 ccs to Mr.M.Ganga Bothra, Party in Person, sr.34971

सत्यमेव जयते Cr1.R.C.No.650 of 2016

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kra 11.07.2016

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