

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

(Orders Reserved on : 19.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.659 of 2016

1. S.Bhuvaneswari
2. R.Srinivasan

... Petitioners/Accused

Vs.

A.Parameswari

... Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, praying to call for the records in M.P.No.67 of 2016 in C.C.No.3048 of 2009 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai - 600 001 and enquire and allow the petition in M.P.No.67 of 2016 in C.C.No.3048 of 2009 and order the revision.

For Petitioners: Mr.N.A.Kareem

For Respondent : Notice served
No Appearance

ORDER

This Criminal Revision Case is directed against the order dated 01.03.2016 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in M.P.No.67 of 2016 in C.C.No.3048 of 2009, dismissing the petition filed by the revision petitioners under Section 45 of the Indian Evidence Act.

2. In this case, the respondent herein had initiated a complaint under Section 138 of the Negotiable Instruments Act before the trial Court against the revision petitioners/accused and the case was taken on file as C.C.No.3048 of 2009 and trial was conducted and now the case was at the argument stage. During the course of defence arguments, the revision petitioners/accused have filed a petition in M.P.No.67 of 2016 seeking to exercise the option to identify the hand writing on

the columns date filled on the cheque Exhibit-P1 and the age of the signatures used by scientific methods and report to the Court for determination of the claims of the complainant in C.C.No.3048 of 2009. The said petition was dismissed by the trial Court and as against the said order, the present criminal revision case is preferred by the revision petitioners/accused.

3. The learned counsel for the petitioners would mainly contend that the complaint was filed by the respondent herein/complainant based on a forged promissory note and cheque for recovery of money. It is further contended that the trial Court is erred in dismissing the petition filed under Section 45 of the Indian Evidence Act which is always maintainable and hence, he prayed that the order passed by the trial Court has to be set aside and the criminal revision case has to be allowed.

4. Even though notice was served on the respondent and her name is also printed in the cause list, she has not chosen to appear either in person or through counsel.

5. This Court has considered the submissions made by the learned counsel for the petitioners and perused the entire records.

6. On perusal of the order of the trial Court, it is seen that the complaint was filed in the year 2009 and P.W.1 was cross-examined on 06.09.2014 and 15.09.2014 and the case was pending for examination of witnesses on the side of the revision petitioners/accused. Thereafter, on the side of the accused, Bank Manager was examined on 09.06.2014 and subsequently, the case was pending for six months for examining the witnesses on the side of the accused. At that time, on 05.01.2016, M.P.No.67 of 2016 in C.C.No.3048 of 2009 was filed by the accused under Section 45 of the Indian Evidence Act.

7. In this case, it is admitted by both sides that the signatures found in Ex.P.1-Cheque are of the signatures of the accused. The accused have only denied the filling up the date in the above cheque. But during the cross-examination, when P.W.1 was examined, she was not cross-examined to that point. Further, P.W.1 had specifically stated in her statement that the filled up cheque alone was given to her by the accused. Hence, the main contention of the learned counsel for the complainant in the trial Court was, the filled up cheque alone was given to the complainant and it is admitted by the accused themselves and that the signatures found in the cheque is also of their signatures. Further, the petitioners have filed the petition before the trial Court only to compare the age of the ink in the cheque and also to find out as to whether who has filled up the date column in the cheque. On the side of the accused, they

have not adduced any specific evidence or specific plea that the date was filled up by the complainant. Further, there is no mechanism available to find out the age of the ink in the cheque-Ex.P.1. Since scientifically no mechanism or lab or authority is available to find out the age of the ink, there is no necessity to send the cheque-Ex.P.1 to handwriting expert to find out the age of the ink. Further, even the revision petitioners are not able to mention about the recognized authority to find out the age of the ink. Since there is no mechanism available to find out the age of the ink, this Court is of the considered view that the petition was filed by the accused only to drag on the proceedings and hence, the said petition was correctly dismissed by the trial Court. There is no infirmity or illegality in the order dated 01.03.2016 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in M.P.No.67 of 2016 in C.C.No.3048 of 2009. This Court finds no reason to interfere with the order passed by the trial Court which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed and accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jr1
To

The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.

+1cc to Mr.N.A.Kareem, Advocate Sr.61643

Cr1.R.C.No.659 of 2016

nr[co]
srg 10/12/2016