

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.26604 of 2015

and

M.P.Nos.1 to 3 of 2015

Nirmala

.. Petitioner

Vs.

S.Ravi

... Respondent

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order of the learned V Additional District and Sessions Judge in C.R.P.No.40 of 2014 dated 15.04.2015 confirming the order of the Judicial Magistrate, Fast Track Court - 2, Coimbatore in Crl.M.P.No.568 of 2012 dated 06.03.2012 and direct the learned Magistrate to subject the cheque Ex.P1 in C.C.No.449 of 2011 for examination by forensic laboratory to ascertain if the contents of the cheque were filled by the petitioner.

For Petitioner : Mr.H.Rajasekar

For Respondent : Mr.P.Saravana Sowmiyan

ORDER

Challenging the order passed in C.R.P.No.40 of 2014 dated 15.04.2015 by confirming the order passed in Crl.M.P.No.568 of 2012 in C.C.No.449 of 2011 dated 06.03.2012 by dismissing the petitioner's application under Section 45 of the Evidence Act, the present Criminal Original Petition has been filed.

2.Learned counsel for the petitioner submitted that the petitioner is an accused in C.C.No.449 of 2011. The respondent has filed a complaint under Section 138 of Negotiable Instrument Act stating that the petitioner borrowed the amount from the respondent and for discharging the same, she issued a cheque and when it was presented for encashment, that has been returned as "insufficient funds". After issuance of statutory notice, the present complaint has been given. When the matter was posted for defence witness after 313 Cr.P.C. questioning, the petitioner filed an application under Section 45 of the Evidence Act stating that the cheque may be sent for Forensic Department

for obtaining handwriting expert opinion. That application was dismissed. Against which, she preferred a revision in C.R.P.No.40 of 2014, which was also dismissed. He would further submit that the cheque has been issued to one Rajasekar in another transaction, the cheque has to be sent to the Forensic Department for obtaining handwriting expert opinion. That factum was not considered by both the Court below. Hence, he pray for an order.

3.Resisting the same, the learned counsel for the respondent would submit that the signature in the cheque has not been disputed and the only dispute is that the cheque has not been given to the respondent/complainant and hence, there is no necessity for sending the document for Forensic Department. That factum has been rightly considered by both the Court below. He further submitted that only with a view to drag on the proceeding, the present petition has been filed. Hence, he pray for dismissal of the petition.

4.Considered the rival submissions made by both sides and perused the typed set of papers.

5.The admitted facts are that the respondent herein filed a complaint under Section 138 of Negotiable Instrument Act. The petitioner herein after Section 313 Cr.P.C. questioning, filed an application under Section 45 of the Evidence Act for sending the cheque to the Forensic Department for obtaining handwriting expert opinion. But admittedly the signature in the cheque has not been disputed. The only dispute is that the cheque has been issued to one Rajasekar in another transaction and not to the respondent herein. It is the duty of the petitioner/accused to prove that the cheque has been issued to Rajasekar and not to the respondent/complainant. So, both the Court below has considered this aspect in proper perspective and came to the correct conclusion. As per Section 139 of Negotiable Instrument Act, once the signature in the cheque has been admitted, the complainant shall invoke presumption under Sections 118 and 139 of Negotiable Instrument Act that the cheque has been issued for discharging legally enforceable debt, which is a rebuttable presumption. The petitioner/accused has to rebut the presumption that the cheque has been issued to one Rajasekar and not to the respondent/complainant herein. But instead of doing so, the petitioner filed an application under Section 45 of the Evidence Act to send the cheque to the Forensic Department for obtaining handwriting expert opinion which shows the malafide intention of the petitioner to drag on the proceedings. In such circumstances, I am of the view that both the Court below has rightly dismissed the petition and so, the petitioner is not entitled for any relief. Hence, I do not find any reason to interfere with the finding of both the Court below and the Criminal Original Petition deserves to be dismissed.

6.In the result, the Criminal Original Petition is dismissed with costs of Rs.1,000/- (Rupees One Thousand Only) to be paid to the Tamil Nadu State Legal Services Authority. Consequently, connected miscellaneous petitions are closed.

cse

s/d-
Assistant Registrar(AS)

True Copy

Sub-Assistant Registrar

To

- 1.The V Additional District and Sessions Judge,
Coimbatore.
- 2.The Principal District and Sesisions Judge,
Coimbatore.
- 3.The Judicial Magistrate,
Fast Track Court - 2, Coimbatore
- 4.do thro the Chief Judicial Magistrate,
Coimbatore.

sr(co)
prk2/3

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सत्यमेव जयते

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