

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL. RC. No.1035 of 2017
and
CRL. MP.Nos.9763 and 9764 of 2017

Samsudeen

... Petitioner

Vs.

P.R.Jayanthi

... Respondent

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order of dismissal of Crl.M.P.No.1353 of 2017 in C.C.No.1700 of 2015 dated 27.07.2017 by the learned Metropolitan Magistrate, Fast Track Court-II, at Allikulam, Chennai-600 003.

For Petitioner

: Mr.T.S.Raja mohan

WEB COPY

ORDER

This Criminal Revision case has been filed against the order passed by the learned Metropolitan Magistrate Fast Track Court-II,

Egmore at Allikulam, Chennai-3 in CrI. M.P. No.1353 of 2017 in C.C.No.1700 of 2015 dated 27.07.2017.

2. The case of the petitioner is that, before the trial court, where the proceedings under Section 138 of Negotiable Instrument Act was going on, the petitioner had filed a petition under Sections 311, 311-A of Cr.P.C read with Section 45 of the Indian Evidence Act, with a prayer to send the disputed cheques, i.e. Exhibits P-1 and P-2, to the Forensic Sciences Department to ascertain the age of the ink, which has been used by the accused to put his signature in those cheques.

3. After hearing both parties, the learned Magistrate by the impugned order dated 27.07.2017, has rejected the plea of the petitioner, on the ground that, since there is no mechanism available to ascertain the age of the ink, the plea made by the petitioner to send the exhibits P-1 and P-2, to the Forensic Science Department to verify the age of the ink, cannot be considered and granted.

4. The learned Judge has also by relying upon the judgment of this Court in A.V.Ravichandran Vs. Sri Gokulam Chit & Finance Company Private Limited reported in

<https://indiankanoon.org/doc/58866213/>, has come to the conclusion that there is no such expert available to offer any opinion regarding the age of the ink used for writing the disputed document and dismissed the petition, against which, the present revision has been filed.

5. Mr.T.S.Rajamohan, learned Counsel for the petitioner would rely upon the judgment of this Court rendered in **CRP.(PD) No.3173 of 2009 in the matter of Elumalai Vs, Subramani dated 03.01.2011**, and also the latest decision of the **Andhra Pradesh-Telangana High Court at Hyderabad, in the matter of T.Rajalingam @ Sambam Vs. State of Telangana and another, in Crl.RC. No.3204 of 2016 dated 19.01.2017**. Relying upon these decisions, the learned counsel would submit that, in order to ascertain, the genuinity of a particular document, where recitals have been made or signature has been put in, the same has to be considered after obtaining expert opinion from the Forensic Laboratory concerned. The respondent said to have been executed the cheque on a particular date, month or year. Therefore, the court has been requested to send the same for expert opinion to ascertain the age of the ink used in those documents, for writing the recitals and signatures of the party

concerned. Since this is the legally available method to ascertain the age of the ink, which in fact envisaged under section 45 of the Indian Evidence Act, the petitioner has rightly approached the court, by filing necessary petition to refer the exhibits P1 and P2, for such expert opinion.

6. In this regard, Mr.T.S.Rajamohan, would further submit that the husband of the respondent was running a Chit fund company wherein the petitioner had made some transactions for years together and therefore in this regard the petitioner had given some cheques by way of security deposit in the year 2002 and according to the petitioner, the said cheques were now i.e. in 2015 misused by the respondent, who is none other than the wife of the said owner of the Chit fund company.

7. Therefore, in order to prove the contrary, that the cheques were not issued in the year 2015, the petitioner had no other option except to send the disputed cheques for an expert's opinion to verify, and ascertain the age of the ink, which has been used in the cheque leaves, as if the petitioner signed the disputed cheques in the year 2015.

8. The learned counsel would further submit that unless the Ex. P-1, P-2 i.e. the disputed cheques are referred to the experts opinion for ascertaining the age of the ink, the petitioners defence would get defeated and therefore in the interest of justice, the petition ought to have been allowed by the learned Magistrate. Hence he seeks interference of this Court.

9. Since the petitioner had issued the disputed cheques in the year 2002, as security deposit to the chit company run by husband of the respondent, and unless and until the same is permitted to be proved that, it has been misused by the respondent as if the petitioner executed and signed the disputed cheque, in the year 2015, the petitioner would put to irreparable hardship.

10. However, the reasons given by the learned Magistrate in the impugned order for rejecting the plea made by the learned counsel for the petitioner is that, there is no mechanism available empowering or capable of ascertaining the age of the ink used in documents and therefore such kind of reference is not possible.

11. In this regard, the learned Magistrate has relied upon the

said decision cited above in A.V.Ravichandran Vs. Sri Gokulam Chit & Finance Company Private Limited.

12. The learned counsel submits that it is not disputed that atleast in two cases this Court has given direction to verify the age of the ink. When such kind of reference was made by the trial court, the learned counsel would still insist that atleast now the necessary mechanism seems to have been available. Therefore, if reference is made to such expert body or institution, this kind of innocent litigant can be benefited.

13. Though it was canvassed by the learned counsel for the petitioner, as of now nothing is produced before this court to state that a particular mechanism is available, where experts are in a position to verify or ascertain the age of the ink used in the documents. When this Court specifically, asked clarification from the Additional Public Prosecutor, Mr.C.Iyyappa Raj, he would also ascertain that in Tamil Nadu, there is no such institution/ mechanism available and also the learned Additional Public Prosecutor for Puducherry, who was also available in the Cour, has stated, by way of assisting this court that, even officials of the Forensic Sciences

Department had been summoned by this court, on an earlier occasion to ascertain whether they have such facility to verify and ascertain the age of the ink, used in documents, they also replied in the negative.

14. Therefore, considering these aspects, this Court finds that the reason stated by the learned Magistrate in dismissing the petition filed before it is correct and justifiable.

15. In so far as the plea raised by the learned counsel appearing for the petitioner that since the petitioner has got specific case that he had issued cheques for security purpose in the year 2002 and the same are misused by the respondent, who is none other than husband of the respondent, this court is of the considered view that, still defenses are open for the petitioner to prove the contrary, in this regard, by examining the bank officials with the comparison of serial numbers of the cheque leaves in the year 2002 and in the year 2015 from the account of the petitioner, which he maintains in his bank. Instead of resorting for such legal method, the petitioner cannot insist upon for experts opinion on the cheques to verify the age of the ink.

16. Therefore, on those grounds also the petitioner cannot make

out a case for any interference of this Court on the impugned order passed by the Court below.

17. Hence, for all these reasons this court is not impressed upon the petitioner's case nor has entertained the revision. Accordingly, the same is dismissed. Consequently, connected miscellaneous petitions are closed.

04.08.2017

rli

Index: Yes/No
Internet: Yes/No

To

The learned Metropolitan Magistrate-II
Egmore, Chennai.

Note: Issue order copy on 07.08.2017

सत्यमेव जयते

WEB COPY

R.SURESH KUMAR, J.

rli



CRL. RC. No.1035 of 2017
and
CRL. MP.Nos.9763 and 9764 of 2017

WEB COPY

04.08.2017