

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Crl.R.C.No.965 of 2017 &

Crl.M.P.No.9013 of 2017

J. Kalavathy

...

Petitioner

Versus

M/s. J.P.P. Mills Pvt Ltd.,
No.412 and 413, Patharai, Uppupalayam,
Thiruchengode Taluk, Namakkal District,
Represented by its C.E.O.
Mr. C.Arun Keerthi

...

Respondent

Petition filed under Sections 397 & 401 of the Criminal Procedure Code, to call for and examine the records as to correctness, legality and propriety of the findings and to set aside the order passed in C.M.P.No.2899 of 2016 in S.T.C.No.13 of 2016 dated 04.01.2017 on the file of the Court of Judicial Magistrate (Fast Track Judge), Thiruchengode and to direct the Trial Court to send the disputed Cheque for forensic examination for verification of signature.

For Petitioner : Mr.V. Vigneshwaran

For Respondent : Mr.Guruprasad

ORDER

This Criminal Revision Petition has been filed against the order passed

by the learned Judicial Magistrate, (FTC) Tiruchengode in CMP.No.2899 of 2016 in STC No.13 of 2016 dated 04.01.2017.

2.The respondent has filed a complaint, before the trial Court under Section 138 of the Negotiable Instruments Act(in short N.I. Act) against the petitioner. Before filing such a complaint, the respondent had issued statutory notice on 09.09.2015 after getting a memo from the drawar bank when the cheque issued by the petitioner got dishonoured for insufficient funds. The petitioner having been in receipt of such notice, has not replied. Only thereafter, the said complaint was filed before the trial Court. Before the trial Court, the complaint was taken on file and Section 251 Cr.P.C. questioning was also made and thereafter, examining of witnesses commenced, where PW.1 had given his deposition in chief examination and thereafter, it was posted for cross examination of PW1. Only at that time, the petitioner seems to have filed a petition under Section 45 of the Indian Evidence Act(in short Evidence Act) seeking to send the disputed cheque for expert opinion on the ground that the execution and the signature found in the cheque was denied by the petitioner. The said petition was heard and the plea of the petitioner was rejected by the trial Court through the impugned order, against which, the present revision petition has been filed.

3.Mr.V.Vigneswaran, the learned counsel for the petitioner would state that when the very execution and the signature of the cheque in dispute is denied by the petitioner, in order to prove the said stand taken by the petitioner, it become an absolute necessity to send the cheque leaf for getting an expert opinion and only on that count, he has filed a petition under Section 45 of the Evidence Act, for which, without having considered in proper perspective, the petition had been dismissed by the learned Judge through the impugned order. Hence, the same is liable to be interfered with. The learned counsel would further submit that though the petitioner had not made defence at the earliest point of time available to him, when at the time of receipt of statutory notice from the respondent and even immediately after the complaint taken on file, that would not disentitle him to make such a plea of denial of execution of signature in the cheque leaf and on that ground, he can very well seek for an order to send the disputed cheque for expert opinion. In support of his contentions, the learned counsel has relied on the judgments reported in **(2008) 5 SCC 633(T.Nagappa Vs.T.R.Muralidhar)** and **(2008) 12 SCC 170(Damara Venkata Murali Krishna Rao Vs. Gurujupalli Satvathamma)**.

4.Per contra, the learned counsel for the respondent would contend that the cheque was executed and signed only by the petitioner and since the

same has got dishonoured, and on receipt of the memo to that effect as communicated by the drawer Bank, the respondent ultimately sent the statutory notice demanding payment. On receipt of the said statutory notice, the petitioner did not choose to send any reply. The learned counsel would state that if at all the petitioner had defended the case that he did not execute a cheque and he has not signed in the cheque as alleged by the respondent, through the statutory notice, the same could have been very well be repudiated and refuted by sending a proper reply notice.

5. The learned counsel for the respondent would also submit that since no reply was given and nothing was forthcoming from the petitioner to clear debt by making payment in lieu of the dishonoured cheque, the respondent invoking Section 138 of the N.I. Act, had filed a complaint before the trial Court, where the trial Court after having taken oath of the respondent, had registered a complaint and issued summons to the petitioner. The learned counsel would also submit that at least on receipt of the summons from the trial Court on the complaint filed by the respondent, the petitioner could have come forward to state that he has not executed the cheque and the signature found therein is being disputed. No such attempt seems to have been made by the petitioner.

6.The learned counsel for the respondent would also submit that even after the complaint was taken on file and after the petitioner entered appearance on issuance of summons and even at the time of Section 251 Cr.P.C questioning, the said plea was not taken. Only after the completion of chief examination of PW1, the petitioner had come forward with the present petition under Section 45 of the Evidence Act. Therefore, this conduct on the part of the petitioner would clearly establish that only to scuttle the proceedings such application was filed and the same had been rightly rejected by the trial Court, through the impugned order. Hence, the same requires no interference from this Court. In support of the said contentions, the learned counsel would rely upon the following judgments reported in **2011 (2) MWN (Civil) 637, (K.R.Chinnasamy Vs. K.R.Chinnasamy), CDJ 2014 MPHC 135(Sadhna Pandey Vs. P.C.Jain), 2011(1) MWN (Cr) DCC 84(Decon Construction, rep. By Managing Director, Gobalakrishnan Vs. J.A.Stephen and another), 2010(1) MWN (Cr) DCC 89(S.Seeeralathan Vs. N.Chandrasekaran) and 2012(1) MWN (Cr) DCC 188 (Mad.)(C.Murugan vs. M.Syed Sultan).**

6.I have heard the learned counsel on either side. Certain facts are not in dispute, which are that, after the receipt of statutory notice from the respondent, the petitioner has not chosen to file any reply at the earliest point

of time, where the petitioner could have raised the issue disputing the very execution and signature of the cheque and after the complaint was taken into cognizance, summons were issued and on receipt of the same, the petitioner entered appearance and even thereafter, the said plea, which is very crucial point for the petitioner, has admittedly not been taken, and also even, as rightly pointed out by the learned trial Judge, at the time of Section 251 Cr.P.C. questioning such plea was not raised by the petitioner. Moreover, during the pendency of trial, it seems that the petitioner had filed an application before the trial Court in CMP No.736 of 2016, to stay the trial. The said petition seems to have been dismissed by the trial Court, as against which, the petitioner had moved revision before the first appellate Court by filing Crl.R.C.No.4 of 2016. Even in these proceedings, the petitioner has not taken a plea that he has not executed the cheque and the signature found in the cheque leaf, was in dispute. These factors would go to show that the petitioner, not only at the earliest point of time but even on subsequent available opportunities or occasions, had not come forward to raise a plea denying the execution of the cheque or disputing the signature found in the cheque leaf.

7.In this context, the learned counsel for the petitioner has relied upon the decisions reported in **(2008) 5 SCC 633(T.Nagappa Vs.T.R.Muralidhar)**,

(2008) 12 SCC 170(Damara Venkata Murali Krishna Rao Vs. Gurujupalli Satvathamma), as cited *supra*. In the judgment first cited *supra*, the learned counsel would rely upon paragraph No.9, which reads hereunder:

9.What should be the nature of evidence is not a matter which should be left only to the discretion of the court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of Sub-Section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses, etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant."

Likewise, the learned counsel would rely upon the decision reported in **(2008) 12 SCC 170(Damara Venkata Murali Krishna Rao Vs. Gurujupalli Satvathamma)**, wherein, paragraph No.8, it is held as follows:

"8.Learned counsel for the appellant submitted that the High Court has proceeded on erroneous premises. The

cross-examination was conducted on 24.07.2006 and the application in question was filed on 01.08.2006. The application was filed in terms of Order 19, Rule 1 of the Code of Civil Procedure, 1908(in short"CPC"). There is no appearance on behalf of the respondent. The conclusions of the High Court, that the sole object in making the application was to protract the litigation, is not factually correct as the factual scenario goes to show. The earlier civil revision petition was disposed of on 29.03.2006. On 24.07.2006, son of the respondent(CW 1) was examined after being summoned. According to the appellant, the occasion for making the application arose only after such examination, on account of the statements made denying the suggestions. The application was made immediately on 01.08.2006.

By citing the above decisions, the learned counsel would state that as per the law laid down by the Hon'ble Apex Court in the judgment reported in **(2008) 5 SCC 633(T.Nagappa Vs.T.R.Muralidhar)**, the accused should not be allowed to unnecessarily protract the trial or summoning of the witnesses whose evidence would not be of relevance but at the same time it was not held that it is the accused who knows how to prove his defence and ordinarily, the accused should be allowed to approach the Court for obtaining assistance with regard to summoning of witnesses etc. It has also been relied upon by the learned counsel that if it is applied to the present facts of the case, certainly

it will only lead to communicative line as the Hon'ble Apex Court has given privilege for the accused to take his defence and has cautioned that the accused should not be allowed to unnecessarily protract the trial.

8. Here in the case on hand, though all possible opportunities were given to the petitioner, none of which were utilized by the petitioner, either at the time of receipt of statutory notice or after receipt of summons from the Court or even at the stage when he was questioned under Section 251 of Cr.P.C. The petitioner had come forward to take such a plea only now. Moreover, though the petitioner diligently had taken steps to file a petition to stay the proceedings and failed therein and had further taken efforts to approach the first Appellate Court by way of revision petition, nowhere in that proceedings also, such a plea had been taken by the petitioner. Therefore, these facts would clearly establish to come to the conclusion that only for protracting the proceedings, the petitioner has moved the petition under Section 45 of the Evidence Act, only at this juncture, where the cross examination of PW1 was posted for. Moreover, in the judgments relied upon by the learned counsel for the respondent, the said principle that the accused shall not be permitted to protract the proceedings, had been reiterated ***in the case of CDJ 2014 MPHC 135(Sadhna Pandey Vs. P.C.Jain)*** as cited supra. Exactly, a similar situation was confronted in the said case. Therefore, certain portions of the

said judgment which are very much useful to decide the present issue raised in this case, are reproduced hereunder:

2. The facts giving rise to this revision in short are that the applicant herein to pay the consideration had given the impugned cheque to the respondent. The respondent deposited the same with his banker for collection but was returned to him with the memo of his banker with endorsement that same has been dishonored due to insufficient fund, on which after complying the technical provisions of [Section 138](#) and other related provisions of the Act the respondent had filed the impugned complaint against the applicant, in which the cognizance of [Section 138](#) of the Act was taken against the applicant and after his appearance the plea was recorded, he abjured the guilt, on which the trial was passed. After recording the evidence of the respondent the impugned application of [Section 45](#) of Evidence Act was filed on behalf of the applicant with a prayer to get examine her signature on the cheque through hand writing expert. Such application was opposed by the respondents saying that such defence being not taken at any earlier stage either in response of demand notice or in the cross-examination of respondent's witnesses, is not available to the applicant. Such prayer is also opposed on the ground that cheque was not dishonored by the banker of the applicant on such ground of difference of the signature but the same was dishonored only on the ground of insufficient fund, so the

examination of signature of the applicant on the cheque from the hand writing expert is neither necessary nor could be permitted. On consideration the impugned application was allowed by the trial Court and applicant was permitted to get examine her signature of the cheque from the hand writing expert, on which the respondent had filed the criminal revision before the Sessions Court. After extending the opportunity of hearing to the parties on consideration vide impugned order dated 17.11.2011 by holding that cheque being dishonored only on the ground of insufficiency of fund and not on difference of the signature of the applicant, the examination of such cheque from hand writing expert is not necessary the revision was allowed and by setting aside the order of the trial court the impugned application of the applicant was dismissed on which the applicant has come to this court with a prayer to set aside the order of the revisional court by restoring the order of trial court.

4. Responding the aforesaid arguments by justifying the impugned order of the revisional court Shri Shobhit Aditya, learned counsel for the respondent said that the same being passed on proper appreciation of the available factual matrix and existing legal position is in conformity with law, it does not require any interference at this stage. In continuation he said that on taking into consideration the provision of presumption enumerated under [Section 118](#), [119](#) and [120](#) of the Act the aforesaid

defence is not available to the applicant. He also said that the impugned cheque was dishonored by the banker of the applicant on the ground of insufficiency of fund then other ground raised by the applicant regarding difference of signature on the cheque is not required any consideration, as the impugned cheque was neither dishonored on such ground nor the case of the respondent is based on such ground therefore, such defence is not available to the applicant and in such premises, the applicant could not be permitted to get examine the signature of the applicant on the cheque from hand writing expert. In support of such contention he also place his reliance on the decision of the Apex Court in the matter of L. C. Goyal Vs. Mrs. Suresh Joshi and ors reported in AIR 1999 S. C. 2222, so also on the case law of Karnataka High Court in the matter of H. M. Satish Vs. B. N. Ashok reported in 2007 Cri. L. J. 2312 and the case law of Andhra Pradesh High Court in the matter of Manda Syhamsundra Vs. Kurella Anjaneyachari & anr. reported in Vol- IV (2008) BC 673 and prayed for dismissal of this revision.

7. In the case of denial of signature of drawer of a cheque, the best witness would be the concerned Bank Manager and not a hand writing expert. The learned Magistrate has allowed the application solely on the ground that the accused would be put to greater hardship if the application were rejected. The learned magistrate has not appreciated the facts on record while allowing the

application. It is useful to refer to the decision of the Hon'ble Apex court rendered in *L.C. Goyal v. Mrs. Suresh Joshi and Ors.* Has observed in para 8 of its judgment as under that ...the cheque bounced not on account of the fact that the appellant of Ext.C-4 was not talking with the specimen signature of the appellant kept with the bank, but on account of insufficient funds. Had the signature on Ext C-4 been different, the bank would have returned the same with the remark that the signature on Ext C-4 was not tallying with the appellant's specimen signature kept with the bank. The memos Ext. C-6 and Ext.C-8 issued by the bank clearly show that the signature of the appellant on Ext.C-4 was not objected to by the bank, but the same was returned with the remark "insufficient funds". This circumstances shows that the signature of Ext.C-4 was that of the appellant."

In the aforesaid judgment, the learned Judge, after taking into consideration the judgment of the Hon'ble Apex Court in *L.C.Goyal Vs. Mrs.Suresh Joshi AIR (1999) SC 2222*, has also explained about the other situation or other reason. According to the said decision, where also a similarly placed issue was posted for decision where a similar plea was taken, denying the execution of the cheque and the signature found in the cheque leaf. For the said plea, the High Court has given a complete answer, of course by following the decision of the Hon'ble Apex Court as cited supra, to state that

if the cheque is dishonoured on the ground of insufficient funds, then the same has to be rebutted only by examining the Bank Manager, otherwise, if the cheque was dishonoured on the ground that the signature of the drawar is not tallying with the subsequent signature, then only the cheque is dishonoured on that ground and then only the cheque in question has to be referred to for expert opinion. Therefore, looking from that angle also, the plea raised by the petitioner in the present case cannot be considered to be a sustainable one or an acceptable one.

9. Considering all these aspects, the learned Judge has rejected the plea of the petitioner in the order impugned, where all these reasons have been given and therefore, this Court, under revisional jurisdiction, cannot find any fault or infirmity in the said order, which is impugned herein and therefore, this Court is of the considered view that the order impugned is justifiable and sustainable and therefore, on that ground, the revision petition is liable to be dismissed. Accordingly, the revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

10.08.2017

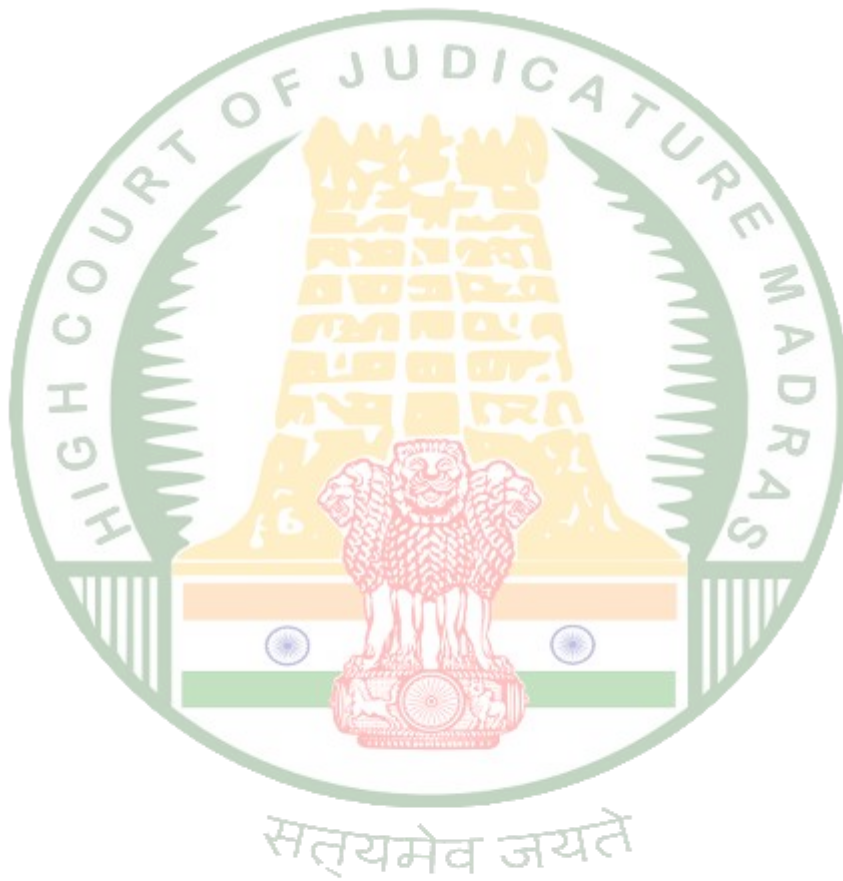
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To

The Judicial Magistrate (Fast Track Judge), Thiruchengode



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