

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.Nos.1657 to 1660 of 2016

AND

Crl.M.P.Nos.13737, 13738,13739,13741, 13742,13743,13744 of 2016

D.Mohan

... Petitioner
(in All Crl.R.C.)

vs

S.Usha

... Respondent
(in All Crl.R.C.)

PRAYER IN CRL.R.C.NO.1657 OF 2016 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate No.II, Fast Track Magistrate Level, Poonamallee in Crl.M.P.No.4283 of 2016 in S.T.C.No.229 of 2016 dated 30.11.2016.

PRAYER IN CRL.R.C.NO.1658 OF 2016 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate No.II, Fast Track Magistrate Level, Poonamallee in Crl.M.P.No.4285 of 2016 in S.T.C.No.231 of 2016 dated 30.11.2016.

PRAYER IN CRL.R.C.NO.1659 OF 2016 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate No.II, Fast Track Magistrate Level, Poonamallee in Crl.M.P.No.4284 of 2016 in S.T.C.No.230 of 2016 dated 30.11.2016.

PRAYER IN CRL.R.C.NO.1660 OF 2016 Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate No.II, Fast Track Magistrate Level, Poonamallee in Crl.M.P.No.4282 of 2016 in S.T.C.No.228 of 2016 dated 30.11.2016.

For Petitioner : Mr.G.Anabaya Chozhan
(in all CrI.R.C.)
For Respondent : Mr.K,Dhananjayan
(in all CrI.R.C.)

C O M M O N O R D E R

The petitioner in all the revision cases is an accused in a private complaint. The respondent filed the complaint against the petitioner on the ground that the petitioner has borrowed some amount from the respondent and in order to discharge the said amount, the petitioner has issued the cheques, when the same were presented for collection, the cheques were returned on the ground of "insufficient funds". After completing the legal formalities, the respondent filed a private complaint against the petitioner. After receipt of the summons and verifying the records, the petitioner found that there are so many manipulations in the disputed cheques. In the said cheques, the date of the cheque has been corrected from 12.07.2014 to 12.01.2016 and a counter sign also found below the correction which is not that of the petitioner, and the respondent forged his signature, likewise in the other cases also there are corrections in the date and amount of the cheque. In the above circumstances, the petitioner filed an application under Section 45 of the Evidence Act to send the disputed cheques to the handwriting expert for getting opinion regarding the corrections made in the cheques and disputed counter sign found in the cheques. The Court below, by its order dated 30.11.2016, dismissed the applications by holding that the corrections made in the cheques are easily palpable and visible through naked eye and sending the document to expert opinion for said purpose would not serve any purpose and the situation does not warrant to send the documents, the Court below also held that no such expert available in India to determine age of Ink in the cheque. Now, challenging the same, the present criminal revision cases has been filed.

2. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

3. The learned counsel appearing for the petitioner would submit that the correction made in the cheques were forged by the respondent/ complainant and the counter sign put in the cheques are not that of the petitioner, which is also forged by the respondent/complainant. In the above circumstances, unless the material alteration in the cheques are compared by the hand writing expert with that of the original signature found in the bottom of the cheque, the petitioner will be prejudiced.

4. Per contra, the learned counsel appearing for respondent submitted that the petitioner has admitted the borrowel of the amount and admitted the issuance of cheque. Now, it is not open to the petitioner to raise the contention that the correction made in the cheque is not that of the petitioner/accused, the Court below considering all the facts and circumstances of the case, dismissed the application and there is no reason to interfere with the order passed by the Court below.

5. I have considered the rival submissions.

6. It is the specific case of the petitioner/accused that even though the petitioner/accused admitted the issuance of the cheques and also the signature found in the bottom of the cheque, there are number of corrections made in the cheques the date of the cheque has been corrected, the amount found in the cheque also has been corrected and the counter sign found the cheque is not that of the petitioner/accused. The learned counsel appearing for the petitioner submitted that the counter sign found in the above cheque is not that of the petitioner and it has been forged by the respondent/complainant. On perusal of the disputed cheque, it could be seen that there were number of corrections made in the cheque, the petitioner/accused disputed the correction found in the cheques and also denies the counter signature found in the top of the cheques. In the above circumstances, in order to give an opportunity to establish his defence, it is necessary that the cheques should be sent to the handwriting expert to compare the signature found in the cheques along with the original signature of the petitioner, by comparing the same by an expert no prejudice will be caused to the respondent/complainant. The Court below, without considering the facts and circumstances of the case, dismissed the application on the ground that no purpose would be served by sending the cheque to the handwriting expert. Hence, the impugned order passed by the Court below is liable to be interfered and the same is liable to be set aside. The prayer for ascertaining the age of the ink, as no expert available it cannot be done.

7. In the result, the Criminal Revision Cases are allowed and the impugned orders passed by the Court below is set aside, and the Court below is directed to send all the cheques to the Tamil Nadu Forensic Lab Department, Chennai for getting an expert opinion regarding the corrections made in the cheques and also to compare the counter sign found in the cheques along with the original signature of the petitioner found in the bottom of the cheques. The court below is also directed to obtain expert opinion within a period of eight weeks and after

obtaining expert opinion, the Court below is directed to proceed with trial. Consequently, connected M.Ps. are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rrg

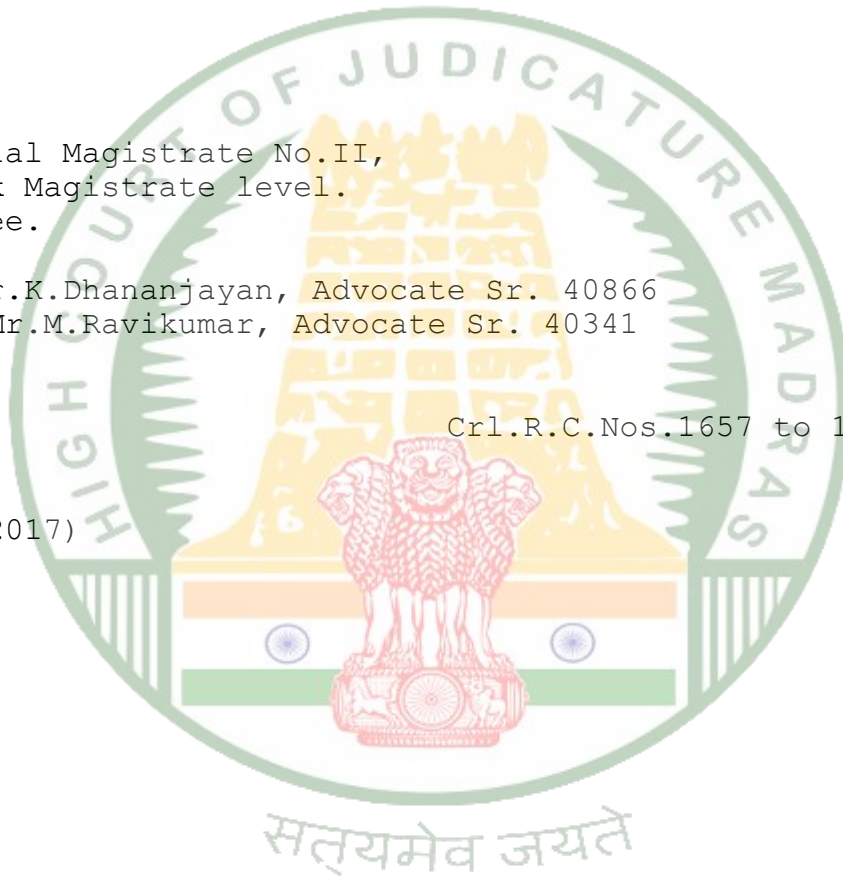
To

The Judicial Magistrate No.II,
Fast Track Magistrate level.
Poonamallee.

+1cc to Mr.K.Dhananjayan, Advocate Sr. 40866
+4ccs to Mr.M.Ravikumar, Advocate Sr. 40341

CrI.R.C.Nos.1657 to 1660 of 2017

NM(CO)
VR(27/07/2017)



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