



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDARCRL.O.P.(MD)No.11638 of 2017andCRL.M.P.(MD)No.8005 of 2017

WEB COPY

Thenmozhi

... Petitioner/Accused

-Vs-

Marikannan

... Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records of the impugned order, dated 26.07.2017 in Crl.R.P.No.5 of 2016 on the file of the District and Sessions Court, Sivagangai, in Cr.M.P.No.9938 of 2015 in C.C.No.191 of 2014 on the file of the learned Judicial Magistrate No.I, Sivagangai and to set aside the same.

For Petitioner

: Mr.R.Srinivasan

For Respondent

: Mr.C.Ramesh,

Additional Public Prosecutor.

O R D E R

This Criminal Original petition is filed as against the order passed by the learned District and Sessions Judge, Sivagangai, in Crl.R.P.No.5 of 2016, dated 26.07.2017 confirming the order passed by the learned Judicial Magistrate No.I, Sivagangai, in Cr.M.P.No.9938 of 2015 in C.C.No.191 of 2014.

2. Heard the learned counsel appearing for the petitioner.

3. The petitioner is the accused in a criminal case which was filed under Section 138 of Negotiable Instruments Act. The signature of the petitioner is admitted by the petitioner himself. However, the defence was that a cheque was not supported by any consideration and that what was handed over is a blank cheque. It is in these circumstances, the petitioner seems to have filed a petition to send the cheque for Expert evidence in Cr.M.P.No.9938 of 2015 and the said petition was dismissed by the learned Judicial Magistrate No.I, Sivakasi, on the ground that there is no necessity to send the document for Expert opinion. Though the petitioner filed a Criminal Revision petition before the District Sessions Court, Sivagangai, the same was also dismissed.

Aggrieved by that , the above Criminal Original petition is filed.

4. When the signature of the petitioner was not in dispute, the fact that the particulars were filled up by the complainant or by some one else is not relevant. As a matter of fact, the case of the petitioner is that the Cheque has been filled up by the complainant with the help of one Rajendran and that the same is not supported by any consideration. These facts cannot be proved by Expert opinion and that therefore, the said petition was rightly dismissed by the trial Court. When the petitioner's specific case is that the Cheque was handed over with the signature of the petitioner without filling up, it can be proved by other evidence and there is no necessity to seek Expert opinion. Even assuming that the Cheque was not filled up by the petitioner, the holder of the Cheque has got right to fill up the Cheque. In this case, the complaint is made by a third party. The liabilities and privileges of the person who has obtained the Cheque in due course is dealt with under the other provisions of Negotiable Instruments Act. Without even stating or mentioning the name of the person who according to the petitioner, the Cheque was filled up, the petition is filed by the petitioner. As rightly pointed out by the Revisional Authority that the petition has been filed without even mentioning the details of any other document with which the petitioner wants to compare the signature.

5. In such circumstances, the conclusion of the trial Court as well as the learned District and Sessions Judge, Sivagangai, are valid. Hence, the Criminal Original petition deserves dismissal and the same is dismissed. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To

1. The District and Sessions Judge,
Sivagangai.
2. The Judicial Magistrate No.I,
Sivagangai.
3. -Do- Thro'gh The Chied Judicial Magistrate,
Sivagangai District.

MK/KK/SAR-3/25.10.2017/2P/4C