



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C (MD) .No.279 of 2015

and

M.P. (MD) .No.1 of 2015

Parthiban

... Petitioner/Accused

-Vs-

S.Ramesh

... Respondent/Complainant

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the order dated 15.06.2015, made in Cr.M.P.No.468 of 2015 in STC.No.533 of 2012 on the file of the Judicial Magistrate, Periyakulam set aside the same.

For Petitioner : Mr.V.Janakiramulu

For Respondents : Mr.P.Muthuvijayapandian

O R D E R

Challenging the order dismissing the petition, filed by the petitioner, under Section 45 of the Indian Evidence Act, the present criminal revision case has been filed.

2.The respondent herein is the complainant. He has filed a private complaint under Section 138 of the Negotiable Instruments Act on the ground that the petitioner herein borrowed a sum of Rs.10,00,000/- (Rupees Ten lakhs) from the respondent/complainant and in order to discharge the same, he issued a cheque bearing No.925164, drawn on Indian Overseas Bank, Lakshmipuram. When the cheque was presented for collection, the same was returned stating "payment stopped by drawer". After completing all the legal formalities, the respondent/complainant has filed the present private complaint and the same was taken on file.

3.After commencement of trial, the petitioner filed a petition under Section 45 of Indian Evidence Act, to send the cheque for comparison, alleging that the signature found in the cheque is not that of the petitioner and the complainant has forged his signature and filed a complaint. The petitioner further stated that already he has issued three cheques in favour of one Velusamy and that Velusamy now filed a private complaint against the petitioner under Section 138 of Negotiable Instruments



Act in S.T.C.No.953 of 2012, pending on the file of the same Magistrate. Since the petitioner has admitted the signature found in the above said three cheques, he wants to compare the signature in the above said cheques with that of the disputed signature in the present complaint. Apart from that, the petitioner also wants to compare many discrepancies found in the cheque. The court below dismissed the said application. Challenging the same, the present revision case has been filed.

4.I have heard Mr.V.Janakiramulu, learned counsel appearing for the petitioner, Mr.P.Muthuvijayapandian, learned counsel appearing for the respondents and perused the records carefully.

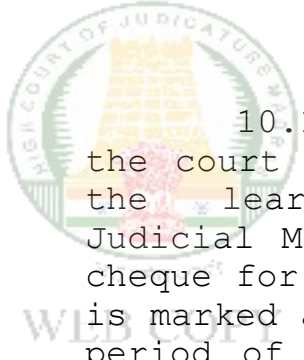
5.The case of the petitioner is that the petitioner has issued three cheques in favour of one Velusamy, which is the subject matter of STC.No.953 of 2012, but the fourth cheque was stealthily taken by the respondent/complainant, and he forged the signature of the petitioner and presented the cheque and filed the complaint.

6.The learned counsel appearing for the respondent submitted that the present complaint has been filed in the year 2012. The petitioner has not taken any steps to file any petition to send the disputed cheque for comparison after a period of three years. Now, the petitioner has filed this petition only to drag on the proceedings. The learned Judicial Magistrate, Periyakulam, after considering the entire materials, has rightly dismissed the petition and there is no illegality in the order passed by the court below.

7.I have considered the rival submissions.

8.The main contention of the petitioner is that he never issued any cheque to the defacto complainant and the respondent has stolen the cheque of the petitioner and forged the signature.

9.Since the petitioner now disputes the signature found in the cheque and in order to prove his defence, in the interest of justice, an opportunity may be given to the petitioner to prove his defence. But the prayer to compare the signature found in the disputed cheque with other three cheques, which is the subject matter of another criminal case, cannot be considered. Only if the petitioner file any documents having his admitted signature of the contemporary period, it can be considered. Now, the submission of the learned counsel for the petitioner that the signature found in the cheque bearing No.925164 can be compared with the admitted signature found in the sale deed, of the contemporary period, said to have been executed by the petitioner (and as recorded in the present complaint) can be entertained.



10. In the above circumstances, the impugned order passed by the court below is set aside and the matter is remanded back to the learned Judicial Magistrate, Periyakulam and the learned Judicial Magistrate, Periyakulam is directed to send the disputed cheque for comparison of signature along with the sale deed, which is marked as Ex.D.1 in the complaint to a Forensic expert within a period of two weeks from the date of receipt of a copy of this order and a report shall be obtained from the Forensic Expert within a period of six weeks thereafter. After obtaining a report, the learned Judicial Magistrate, Periyakulam is directed to proceed with the trial and complete the same within a period of 6 months thereafter. It is also made clear that the cheque will be sent only for the purpose of comparing the signature and not for any other purpose.

11. In the result, this Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Periyakulam.

+1cc to Mr.V.Janakiramulu, Advocate Sr.No.69219

+1cc to Mr.P.Muthuvijayapandian, Advocate Sr.No.68939

VS

VB/MR/SAR2/01/09/2017/3P/4C

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