



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.16467 of 2016

and

Crl.M.P.(MD)No.8073 of 2016

Kasthuri : Petitioner / Accused

-Vs-

Sebasthiar : Respondent / Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, praying to call for the records of the impugned revision order passed by the learned II Additional District Judge, Tiruchirappalli in Crl.R.C.No.44 of 2014, dated 17.02.2016 and set aside the same.

For Petitioners : Mr.T.Lajapathy Roy
for M/s.R.Meenakumari
For Respondent : Mr.N.Mohideen Basha

O R D E R

This petition is filed to set aside the order passed by the II Additional District Judge, Tiruchirapalli in Crl.R.C.No.44 of 2014, dated 17.02.2016.

2.The petitioner is the respondent in STC No.118 of 2012. The respondent in this petition filed a complaint under Section 138 of Negotiable Instruments Act which is pending before the learned Judicial Magistrate No.II, Tiruchirapalli in STC No.118 of 2012. The petitioner had earlier filed a Crl.O.P.(MD)No.5185 of 2012 to quash the complaint stating that the petitioner has not received any amount from the complainant who according to him is a stranger and further disputed her signature found in the cheque in question. The said Criminal Original Petition was dismissed. However, the petitioner was given liberty to take appropriate steps so as to prove that the signature found in the cheque in question is not her signature.

3.It was thereafter the petitioner filed a petition in Crl.O.P.(MD)No.16467 of 2016 for getting expert opinion under Section 45 and 73 of Evidence Act to send Ex.P2 - cheque regarding the signature and further to analyse the signature in Ex.P2. The said



petition was also dismissed by the trial Court by an order dated 12.05.2014 stating that the petitioner ought to have sought expert opinion for both Ex.P1 and P2 and not P2 alone. Therefore, liberty was also given to the petitioner to file a fresh petition for the same relief in appropriate manner. Thereafter, the petitioner filed Cr.M.P.No.7690 of 2014 for appointment of an Advocate Commissioner to take the original cheque bearing No.002201 drawn on Lakshmi Vilas bank, Uthamarkovil, Tiruchirapalli, dated 10.01.2012 along with promissory note alleged to have been executed by the petitioner on 02.09.2011 and with the admitted signature of the petitioner and to place the same before the hand writing expert for examination and for comparison and to submit a report obtained from the hand writing expert before the trial Court.

4.The said petition was allowed by the trial Court. However, the respondent herein filed a criminal revision in CrI.R.C.No.44 of 2014. The learned II Additional District Judge allowed the revision petition and set aside the order passed by the learned Judicial Magistrate No.II, Tiruchirapalli in Cr.M.P.No.7690 of 2014. Challenging the order of the II Additional District Judge, dated 17.02.2016, the petitioner has preferred the above Criminal Original Petition.

5.The learned counsel for the petitioner submitted that the petitioner was given liberty by this Court earlier to take appropriate steps so as to prove that the signature found in the cheque in question is not her signature. Hence, it is submitted that irrespective of the form in which the prayer was sought for, the petitioner ought to have been given an opportunity to prove her case. Since the petitioner has raised specific plea in her reply notice disputing her signatures in the promissory note, it is contended that the II Additional District Judge ought to have seen that the petitioner should be given a fair opportunity as there is no alternative to prove her case except by getting an expert opinion. Since denial of a fair opportunity amounts to denial of a fair trial, it was further submitted that to ensure justice, the learned II Additional District Judge ought to have confirmed the order of trial Court in tune with the established principles of law. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in the case of *M/s.Kalyani Baskar v. Mrs.M.S.SAmpoornam* reported in (2007) 2 SCC 258 and another judgment of the Hon'ble Supreme Court in the case of *T.Nagappa v. Y.R.Muralidhar* reported in (2008) 5 SCC 633. Stating that the expert opinion is the best evidence, it was further contended by the learned counsel for the petitioner that the appointment of Advocate Commissioner to take documents from the custody of the trial Court and to forward the disputed documents with the specimen signature of the petitioner in bank account to the expert is in the interest of justice.



6.Mr.N.Mohideen Basha, learned counsel appearing for the respondent submitted arguments to sustain the order passed by the learned II Additional District Judge. It was pointed out that the disputed cheque was returned by the bank for insufficient funds and not for the reason that the signature differs. It was further submitted that the petitioner had filed earlier a petition in Cr.M.P.No.2787 of 2014 for similar relief and that the same was dismissed. It was further contended that the second application is not maintainable as no appeal or revision was filed as against the order dismissing Cr.M.P.No.2787 of 2014. The learned counsel for the respondent further submitted that the petition is only to drag on the proceedings and that there is no *bona fide*.

7.The lower Court itself raised a question whether it is permissible to order for a comparison of signatures of the petitioner found in the disputed cheque and the promissory note produced before the learned Judicial Magistrate No.II, Tiruchirapalli. Since the petitioner has not produced any of his admitted contemporary signatures, the petition filed by the petitioner was held to be not sustainable. Since Cr.M.P.No.2787 of 2014 was dismissed by the learned Judicial Magistrate No.II, Tiruchirappalli, it was further held that there is no reason for the trial Court to allow Cr.M.P.No.7690 of 2014 when both the applications were for the same purpose. The learned II Additional District Judge further pointed out that the trial Court did not clarify the documents to be produced for comparing the signatures of the petitioner in the promissory note and the cheque. Relying upon the judgment of this Court for the proposition that unless the admitted document as well as the disputed document belong to contemporaneous period, the Court cannot send the documents for expert opinion for comparison of signatures. The learned II Additional District Judge further held that mere comparison of promissory note and the cheque would not reveal any truth or solve the purpose of the application. Finally, the lower Court has observed that the petitioner is trying to drag on the proceedings as he has not come forward with the documents of admitted signatures to get it compared with the disputed signature.

8.It is to be noted that Cr.M.P.No.2787 of 2014 in STC No.118 of 2012 was filed to send the document Ex.P2 namely the cheque to get the expert opinion as to the age of the ink and to get opinion regarding signature and to analyse the signature etc. Though the said petition was dismissed, it was observed that the petitioner has not sought for comparison of signature in Ex.P1 - promissory note, despite the fact that he had denied the signature both in the cheque as well as in the promissory note. It was further observed by the trial Court that the petitioner's application for expert opinion on age of the ink is without basis and that the petition is meant to drag on the case. However, <https://hcservices.courts.gov.in/hcservices> to the petitioner to file fresh petition for the same relief in a suitable manner. Having regard to the reasons stated by the lower Court originally while dismissing



Cr.M.P.No.2787 of 2014, this Court does not justify the conclusion of the learned II Additional District Judge that the subsequent application in Cr.M.P.No.7690 of 2014 in STC No.118 of 2012 is not maintainable after allowing the earlier order in Cr.M.P.No.2787 of 2014 to become final. In this regard, it is to be noted that the present application filed by the petitioner in Cr.M.P.No.7690 of 2014 is for getting expert opinion by comparing the signature of the petitioner both in the cheque as well as in the promissory note. The petition was allowed by the trial Court and a direction was given to examine the signature on cheque as well as in the promissory note, reply notice and signature on first questioning including the signature on vakalat. Therefore, it is to be noted that the petition for expert opinion was allowed subject to furnishing contemporaneous admitted and admissible signatures of the petitioner. Having regard to the facts and the order passed by the learned Judicial Magistrate No.II, Tiruchirapalli, in Cr.M.P.No.7690 of 2014, the reasoning of the learned II Additional District Judge, Tiruchirappalli to reverse the order cannot be sustained. It is also to be remembered that this Court also has earlier preserved liberty to the petitioner to take steps to establish her stand that the signature found in the cheque in question is not her signature.

9. Merely because the disputed dishonored cheque is returned by the bank not for the reason that the signature differs but for the reason of insufficient funds, it cannot be stated that the petition to send the disputed cheque for expert opinion is not maintainable. The bank officials are not experts and in this case, no one has stated or examined to show that the bank has verified the signature of the petitioner found in the disputed cheque along with his signature in the admitted documents and expressed any opinion. Even if the bank has returned the cheque either on the ground that the cheque does not contain the signature of the drawer or has passed the cheque, it is not conclusive when the issue comes before the Court on specific plea. The further observation of the lower Court that without document of admitted signature, the disputed signature cannot be compared is unwarranted, as the petition itself was allowed by the trial Court subject to furnishing contemporaneous admitted signatures of the petitioner. It is also brought to the notice of this Court that the respondent himself has stated that he has no objection for comparing the signature of the petitioner in the cheque as well as in the promissory note.

10. For all the above reasons, this Court is unable to sustain the order passed in CrI.R.C.No.44 of 2014, dated 17.02.2016 by the II Additional District Judge, Tiruchirapalli, and hence, it is set aside. Accordingly, this Criminal Original Petition is allowed. The order passed by the learned Judicial Magistrate No.II, Tiruchirapalli, dated 10.09.2014 in Cr.M.P.No.7690 of 2014 in STC No.118 of 2012 is restored. The



trial Court is further directed to specify the documents which are to be sent along with the documents for comparison of the signatures by the experts after hearing the parties. This exercise shall be done within a period of three weeks from the date of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The II Additional District Judge,
Tiruchirappalli.

2.The Judicial Magistrate No.II,
Tiruchirappalli.

+1cc to M/s.MEENAKUMARI, Advocate, SR.68219

CRL.O.P.(MD)No.16467 of 2016
26.07.2017

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KK/SV MMS/SAR 1/23.01.2018/ 5P- 4C/