



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

Cr1.R.C (MD) No.370 of 2016

and

Cr1.MPMD)No.4564 of 2016

Thangathai Arul

... Petitioner

Vs.

Jeyakumar

... Respondent

Petition filed under Sections 397 read with 401 Cr.P.C, to call for records relating to the order passed by the Judicial Magistrate, Valliyoor in Cr.M.P.No.9754 of 2014 in S.T.C.No.2504 of 2011 dated 18.11.2014 and set aside the same and allow the application.

For Petitioner : Mr.N.Dilipkumar
For Respondent : Mr.S.Malaikani

ORDER

This Criminal Revision Case has been filed against the order of dismissal, passed in a petition filed to send the cheque and pay in slip (Exs.P1 and P2), to an handwriting expert for the purpose of comparing the signatures found therein.

2.The petitioner is the accused in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. The respondent herein has filed the said complaint on the ground that the petitioner has borrowed a sum of Rs.12,00,000/- towards hand loan and in order to discharge the loan, he filled up a cheque and handed over the same in-person to the complainant on 26.01.2011 and requested him to present the cheque on 01.02.2011. When the respondent/complainant presented the cheque on 04.02.2011 for collection, the same was returned as "funds insufficient". Subsequently a legal notice has been given to the petitioner on 08.03.2011 even after receipt of the same, he has not chosen to discharge his liability. Hence, the respondent has filed the present complaint. Pending complaint, the petitioner has filed an application under Section 243(2) read with 45 of the Indian Evidence Act, 1872 seeking to send the disputed cheque (Ex.P1) and also pay in slip, (Ex.P2) filled up by the respondent/complainant, while presenting the cheque in the bank, for comparing the



signatures found therein by an handwriting expert. The said application has been filed on the ground that the petitioner's son has borrowed some amount from one Jeyasekaran in the year 2008 and at that time, the said Jeyasekaran compelled the petitioner and his son to issue signed blank cheques, pronotes and stamp papers as security. The complainant is the friend of the said Jeyasekaran and in connivance of Jeyasekaran, the complainant has misused the unfilled cheques by filling up the same same and initiated criminal case. Since the complainant has clearly stated that the petitioner himself has filled the cheque and handed over to him and according to the petitioner he has given only a blank signed cheque and subsequently it was misused, in order to prove his case, he filed the present application, to send the cheque in question along with pay in slip which was filled by the respondent/complainant along with the cheque at the time of depositing the same in the bank, for the purpose of comparison. The Court below has dismissed the said application. Challenging the order of dismissal, the present Criminal Revision Case has been filed.

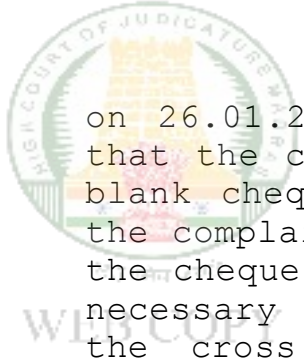
3.I have heard Mr.N.Dilipkumar, learned counsel for the petitioner and Mr.S.Malaikani, learned counsel for the respondent and perused the records carefully.

4.The learned counsel for the petitioner submitted that in the complaint, the complainant has categorically stated that only the petitioner has filled the cheque and handed over the same to him on 26.01.2011 and requested to deposit the same on 01.02.2011. But the writing in the cheque is not that of the petitioner. In order to prove the same, he wants to send the cheque for expert opinion along with pay in slip which was filled up by the respondent/complainant, at the time of presenting cheque for collection in the bank. Apart from that, during the course of cross examination, the complainant has stated that he has no objection to send the cheque for comparison to an handwriting expert.

5.*Per contra*, the learned counsel for the respondent submitted that the present application has been filed only to drag on the proceedings. Even the allegation of the petitioner is that the cheque in question has been given in favour of one Jeyasekaran which has been misused by the complainant to initiate a criminal proceeding and he has to prove the same first, and the present application has been filed with *mala fide* intention.

6.I have considered the rival submissions made on either side and perused the records carefully.

7. From the perusal of the complaint it could be seen that the complainant has specifically stated that the petitioner/accused has filled up the cheque and handed over to him



on 26.01.2011. But the petitioner has disputed the same stating that the cheque was not filled up by him and he has given only a blank cheque in favour of one Jeyasekaran, which was misused by the complainant. Since the petitioner has disputed the writings in the cheque, in order to give a chance to prove his defence, it is necessary to send the cheque for comparison. Apart from that, in the cross examination, the respondent/complainant himself has admitted that he has no objection for sending the cheque for comparison and by comparing the cheque, no prejudice will cause to the complainant. In the above circumstances, the order passed by the Court below is liable to be set aside and the matter is liable to be remitted back to the Court below.

8. In fine, this Criminal Revision Case is allowed. The order dated 18.11.2014 passed in Cr.M.P.No.9754 of 2014 in S.T.C.No.2504 of 2011 by the Judicial Magistrate, Vallioor is set aside and the matter is remitted back to the Court below. The Court below is directed to send Exs.P1 and P2 to an handwriting expert at the Forensic Lab, Chennai, within a period of two weeks from the date of receipt of a copy of this order and get an opinion within a period of six weeks thereafter and after receipt of opinion from the expert, the Court below is directed to dispose of S.T.C.No.2504 of 2011 within a period of three months thereafter. Consequently, Cr1.MP(MD)No.4564 of 2016 is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate, Vallioor

+1 CC to M/s.S.MALAIKANI, Advocate, SR No. 65408.

+1 CC to Mr.N.Dilipkumar, Advocate, SR No. 65492.

MJ

PSM/SKN-RSK/SAR1/27.07.2017/3P/4C

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