



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.07.2017

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C(MD) .No.422 of 2017
and
C.M.P(MD)No.4311 of 2017

P.Raja Samuel ... Petitioner/Petitioner/Accused

-Vs-

Essaki MuthuRespondent/Complainant/Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 and 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the order passed by the learned Judicial Magistrate No.IV, Tirunelveli made in Cr.M.P.No.50 of 2017 in S.T.C.No.179 of 2011, dated 20.3.2017

For Petitioner : M/s.N.Dilip Kumar

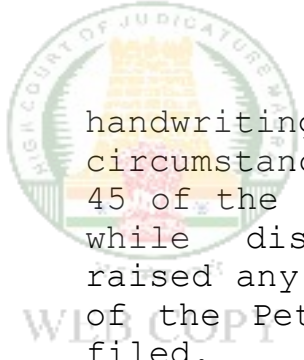
For Respondent : No appearance

O R D E R

The Petitioner is an accused in a private complaint under Section 138 of the Negotiable Instruments Act and he has filed an application under Section 45 of the Indian Evidence Act to send the disputed cheque to the expert for comparing the signature found in the cheque. The above application was dismissed by the trial Court. Challenging the same, the present revision is filed.

2.The respondent herein filed a private complaint against the Petitioner under Section 138 of Negotiable Instruments Act on the ground that the Petitioner has borrowed a sum of Rs.1,25,000/-. In order to discharge the above liability, he has issued a cheque and when the cheque was presented before the drawee Bank, the same was returned with an endorsement as 'insufficient fund'. Thereafter after complying with the legal formalities, the present complaint has been filed.

3.The Petitioner disputing the signature found in the cheque, has cross-examined the complainant alleging that four blank cheques of the Petitioner was taken by the complainant and using the cheques and forging the signature, the present complaint has been filed. In the cross-examination, the complainant has also stated that he has no objection for sending the cheque to



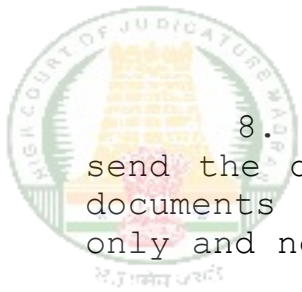
handwriting expert's for comparing the signature. In the above circumstances, the Petitioner filed the application under Section 45 of the Indian Evidence Act and the learned Judicial Magistrate while dismissing the same, stated that the Petitioner has never raised any plea that the signature found in the cheque is not that of the Petitioner. Challenging the same the present revision is filed.

4. Even though notice has been served on the respondent and his name has also been printed in the cause-list, none appears on behalf of the respondent.

5. I have heard the submissions made by Mr. N. Dilipkumar, learned counsel for the Petitioner and considered the entire materials available on record.

6. The Petitioner alleges that the legal notice issued by the complainant was not received by the Petitioner, but during the course of trial, he has raised a plea that the blank cheques of the Petitioner was taken by the respondent/complainant and using the cheque, the complaint has been filed. In the cross-examination the respondent/complaint has also agreed that he has no objection for sending the cheque for hand-writing expert. In the above circumstances, since the signature is disputed, in order to prove his defence, there is nothing wrong in sending the cheque for hand-writing expert for comparison and no prejudice will be caused to the complainant, and as complainant has also no objection for the same.

7. In the above circumstances, the Criminal Revision Petition is allowed and the order passed by the learned Judicial Magistrate No. IV, Tirunelveli made in Cr.M.P.No.50 of 2017 in S.T.C.No.179 of 2011, dated 20.3.2017 is set aside and the same is remanded back to the learned Judicial Magistrate for fresh disposal. The Petitioner is directed to produce documents containing his admitted signature pertaining to the contemporaneous period enabling the court to send the disputed cheque along with the admitted signature to an handwriting expert for comparison. The Petitioner is directed to file the documents containing his admitted signature, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such documents, the court below is directed to send the documents containing the admitted signature with the dispute cheque to an handwriting expert within a period of two weeks thereafter and on receipt of such report, the trial Court shall proceed with the trial and dispose of the case in S.T.C.No.179 of 2011 within a period of three months from the date of receipt of the report from the Handwriting Expert. Consequently, connected Miscellaneous



8. It is also made clear the Court below is directed to send the documents for comparison only if the petitioner produce documents containing admitted signature of the contemporary period only and not subsequent to the date of cheque.

Sd/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

To

The Judicial Magistrate No.IV,
Tirunelveli.

+1 CC TO MR.N.DILIP KUMAR, ADVOCATE, SR NO.64061

vsn

MAS/MR-KKR/SAR1:17.07.2017:3P-3C

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