

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Criminal Revision Case No.285 of 2018
and
Crl.M.P.No.3275 & 3276 of 2018

A.Gayathiri ... Petitioner /Accused

vs

M.Jaishankar Respondent/Complainant

Prayer : Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, against the order dated 30.11.2017 made in Crl.M.P.No.3793 of 2017 in C.C.No.2623 of 2015 pending on the file of the Metropolitan Magistrate, Fast Track Court No.I, Egmore at Allikulam, Chennai-600 003.

For Petitioner : Mr.R.Thirumoorthy

For Respondent : Mr.N.Naresh

ORDER

This criminal revision petition is preferred by the petitioner/accused against the order passed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore at Allikulam, Chennai in Crl.M.P.No.3793 of 2017 in C.C.No.2623 of 2015 dated 30.11.2017.

2.Brief case of the petitioner/accused is that:

The prosecution case is that the petitioner/accused borrowed a sum of Rs.3,00,000/- from the respondent on 27.07.2015 and issued a cheque bearing No.000001 drawn on Karur Vysaya Bank, Triplicane High Road, Chennai. The respondent deposited the cheque for collection in his banker Canara Bank, Vepery Branch, Chennai and the same was dishonoured and returned with the endorsement "payment stopped by drawer" on 28.7.2015. The respondent sent a statutory legal notice to the petitioner/accused and the same was received by her on 5.8.2015 deliberately failed and neglected to make payment. Hence respondent filed a private complaint under section 138 r/w 141 of Negotiable Instruments Act.

3. During the trial, the petitioner examined herself as PW1 and exhibits as P1 to P4 were marked. The respondent examined himself as DW1 and exhibits as D1 to D4 were marked. The petitioner/accused filed petition in CrI.M.P.No.3793 of 2017 under section 45 of the Indian Evidence Act praying to send the impugned cheque for expert opinion in order to compare the specimen signature of the complainant with the letters placed in the body of the cheque.

4. The respondent/complainant filed his counter alleging that the petition was filed to drag the proceedings. On enquiry, the learned trial Court dismissed the petition in his order dated 30.11.2017.

5. Aggrieved over the dismissal petition, the petitioner/accused filed this criminal revision.

6. The learned counsel for the petitioner/accused submits that under section 45 of Evidence Act seeking relief for expert opinion in order to compare the specimen signature of complainant with letters imprinted in the body of the cheque alleged to have been issued by her to the complainant.

7. The learned counsel for the petitioner/accused submits that the respondent has not even mentioned the date of transaction in the complaint and moreover during cross examination he categorically stated that cheque was filled by the petitioner and given to him but the revision petitioner strongly denied the same. Hence to prove her stand and disprove the case of complainant the petitioner has taken out an application to compare her signatures imprinted in the body of the cheque but lower Court wrongly dismissed the same by observing irrelevant reasoning.

8. The learned counsel for the petitioner/accused submits that the respondent /complainant has given no objection for sending the subject matter of cheque to get opinion from the expert by comparing the admitted signature of the petitioner/accused.

9. I heard Mr.R.Thirumoorthy, learned counsel for the revision petitioner and Mr.N.Naresh, learned counsel for the respondent. The respondent submits that he has no objection for allowing this revision.

10. I have carefully perused the records. In the case on hand, the petitioner admitted her signature and denied her handwriting in the impugned cheque. Even before the trial Court, the respondent in his counter alleged that he has no objection in allowing the application and opposed that the case was dragged by initiating one or other ways.

11. It is necessary to ascertain that the disputed question of facts between the parties could be emulated from the report

of the expert opinion regarding the variance in the handwriting. The petitioner filed the application for handwriting expert opinion disputing her signature and writings. To my mind, this apprehension is a serious issue, which strikes root of the complaint.

12. Considering the facts and circumstances of this case, this Court is inclined to pass the following orders:

(a) The criminal revision is allowed and the impugned order in CrI.M.P.No.3793 of 2017 on the file of the learned Metropolitan Magistrate No.I, Fast Track Court, Egmore at Allikulam dated 30.11.2017 is hereby set aside.

(b) The learned Metropolitan Magistrate No.I, Fast Track Court, Egmore at Allikulam is directed to pass orders and to report the same before this Court, within ten days from the date of passing the Judgment. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Metropolitan Magistrate,
Fast Track Court No.I,
Egmore at Allikulam, Chennai-600 003.

2.Do thro' The Chief Metropolitan Magistrate,
Egmore, Chennai-3.

+1cc to Mr.R.Thirumoorthy, Advocate, S.R.No. 23272
+2cc to Mr.N.Naresh Advocate, S.R.No. 23139

Criminal Revision Case No.285 of 2018
and
CrI.M.P.No.3275 & 3276 of 2018

KK (CO)
GN (18/02/2019)