



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2018

PRONOUNCED ON : 11.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.349 of 2012

1.Balakrishnan

2.B.Jagadambal

... Petitioners / Accused

-Vs-

Thangaraj

... Respondent / Complainant

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., praying to set aside the order passed by the learned Judicial Magistrate No.I, Kancheepuram in Crl.M.P.No.5689 of 2011 dated 22.02.2012 and allow the criminal revision petition.

For Petitioners: Mr.R.Balasubramanian

For Respondent : Mr.S.P.Vijaya Ragavan

ORDER

The convicted accused are the revision petitioners herein. They have filed this Criminal Revision case to set aside the order passed by the learned Judicial Magistrate No.I, Kancheepuram in Crl.M.P.No.5689 of 2011 dated 22.02.2012, rejecting the claim of the petitioners that referring the signature to the expert's opinion to find out the age of the ink. Hence, the revision petitioners have approached this Court by way of filing this revision.

2.After hearing both the parties, it is seen that the petitioners are herein having joint A/C No.534010100041636 in AXIS Bank, Kancheepuram Branch. The first petitioner herein missed the blank cheque book of the AXIS Bank, Kancheepuram Branch, Gandhi Road, Kancheepuram on 15.01.2010 in transit. In order to avoid misuse of the lost cheques by some miscreants, the first petitioner herein issued stop payment to the said bank on 04.06.2010. Later the petitioners herein understood that the above named respondent / complainant misused the blank cheque and filed the above complaint as the cheque was dishonored as "Insufficient of Fund". The respondent / complainant herein filed the above complaint as the petitioners had issued the said cheque for the alleged loan of Rs.1,95,000/- (Rupees One Lakh Ninety Five Thousand Only) received from the respondent / complainant herein. The petitioners have filed a petition to summon the Manager of the AXIS Bank, Kancheepuram Branch, Gandhi



Road, Kancheepuram to give evidence with regard to the forged signature and stop payment as their witness. The Manager adduced in chief and cross-examination with regard to stop payment intimation dated 04.06.2010 and their signatures with the cheques filed in the Court below. The Manager stated that the signatures of the first petitioner is similar to that of the Specimen Book and signature of the second petitioner is just different. Immediately the Manager of the AXIS Bank changed the word and stated that the signature of Balakrishnan is different. After verifying the cheque, it was found that the respondent / complainant forged their signature. Then, they filed a petition in CrI.M.P.No.5689 of 2011 to send the said cheque for Expert's opinion, since the evidence of the Manager, AXIS Bank was vague and uncertain. However, the trial Court has rejected the said petition.

3.The learned counsel appearing for the revision petitioners herein would contend that the valuable right of availing opinion from expert in respect of the disputed signature has been lost by virtue of the order passed by the learned Judicial Magistrate No.I, Kancheepuram and hence, seeks a direction to refer the cheque in issue for expert opinion as to the age of the ink in the cheque.

4.Per contra, the learned counsel appearing for the respondent / private complainant would submit that P.W.1 was cross-examined on 25.01.2011 and the Bank Manager has examined as P.W.2 on 10.12.2011 and even at the time of questioning under Section 313 Cr.P.C., the accused have neither disputed the signature in the cheque in issue nor posted any question of suspicion in this regard and their application in CrI.M.P.No.5689 of 2011 for expert opinion on the signature was dismissed by the trial Court on 22.02.2012. As against which, he filed this revision and the same was dismissed on 20.03.2018 for default, subsequently, restored on file on 24.08.2018.

5.The suggestive case of the defence during the cross-examination of P.W.1 is that the signature in the cheque in issue was not disputed by them. However, the cheque was not handed over to the private complainant herein. It appears in the reply notice issued by the revision petitioners / accused that they have categorically admitted the signature and they have taken a specific plea that undated blank signed cheque was misplaced and it appears that the private complainant has misused those missing cheque and filed private complaint.

6.After going through the cross-examination of P.W.1, it is seen that nothing is whispered in the questioning under Section 313 Cr.P.C., and taking note of the said plea, the learned Judicial Magistrate No.I, Kancheepuram has come to the conclusion that in the absence of any plea by way suggestion to



the case, now new plea raised by them, when the matter was posted for judgment is only to drag on the proceedings appears to be correct.

7. In this regard, it remains to be stated that in the decision rendered by this Court in the case of P.R. Ramakrishnan Vs. P. Govindarajan reported in (2007) 1 MLJ (CrL.) 1297, it is stated that when the accused disputes his signature in the cheque in question in a proceeding under Section 138 of the Negotiable Instruments Act, the Court has to afford an opportunity to the accused to obtain an expert's opinion as to the genuineness or otherwise of the signature found therein. The above ratio will not apply to a case, where a cheque admittedly signed by the drawer is sought to be analyzed by an expert for opinion as to the age of the ink used in the cheque.

8. Furthermore, in the case of Yash Pal Vs. Kartar Singh reported in AIR 2003 Punjab and Haryana, 344, it has been observed that the age of the ink cannot be determined on the basis of the writing if the ink in dispute was manufactured five years prior to the date of execution of the document and used effectively on a particular date for the first time and an expert's opinion as to the age of ink will not resolve any controversy.

9. Hence, referring the cheque for expert opinion as to the age of the ink used in it, cannot be issued especially when the defence case being signed cheque has been stolen and misused in lodging criminal case. Hence, the above decisions cited by the respondent are clearly applicable to the facts and circumstances of the present case and considering the above said fact, the order of rejection dated 22.02.2012 passed by the learned Judicial Magistrate No. I, Kancheepuram in CrL.M.P.No.5689 of 2011, does not warrant any interference and the same is hereby confirmed.

10. In the result, this Criminal Revision Case is dismissed. The Registry is directed to send back the records to the concerned trial Court, within a period of three weeks from the date of receipt of a copy of this order. The learned Judicial Magistrate No. I, Kancheepuram is directed to dispose of the case in C.C.No.303 of 2010, within a period of three months thereafter, since the matter is pending for more than number of years.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Myr



To

1.The Judicial Magistrate No.I,
Kancheepuram.

2.The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.R.Balasubramanian, Advocate, S.R.No.86464

Order made in
CRL.R.C.No.349 of 2012

AD (CO)

rrs 28/01/2019