

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.884 & 987 of 2013
and M.P.Nos.1 of 2013

A.Palanisamy

...Petitioner in
both Crl.RC's

Vs.

R.Kumar

...Respondent in
Crl.R.C.No.884 of 2013

R.Thangam

...Respondent in
Crl.R.C.No.987 of 2013

Prayer in Crl.R.C.No.884 of 2013: The Criminal Revision case filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order dated 21.06.2013 passed by the Judicial Magistrate (Fast Track) Court, Omalur, made in C.M.P.No.98 of 2013 in C.C.No.48 of 2013.

Prayer in Crl.R.C.No.987 of 2013: The Criminal Revision case filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order dated 21.06.2013 passed by the Judicial Magistrate (Fast Track) Court, Omalur, made in C.M.P.No.99 of 2013 in C.C.No.49 of 2013.

For Petitioner in both Crl.RC's : Mr.C.Prabakaran

For Respondent in both Crl.RC's : Ms.R.Meenal

ORDER

Both the Criminal Revisions have been preferred by the petitioner against the orders of the Judicial Magistrate, (Fast Track), Omalur, made in C.M.P.Nos.98 & 99 of 2013 in C.C.Nos.48 & 49 of 2013 dated 21.06.2013.

2. Both the respondents have filed complaint against the petitioner under Section 138 and 142 of Negotiable Instruments Act and the same was taken on file in C.C.No.48 & 49 of 2013, before the learned Judicial Magistrate, (Fast Track), Omalur. During the pendency of the trial, the revision petitioner filed petitions before the learned Judicial Magistrate, (Fast Track), Omalur, in C.M.P.Nos.98 & 99 of 2013 under Section 45 of Indian Evidence Act to compare the hand writing found in the original cheques, pay-in-slips and to find out the difference of ink, age of the signatures and the manual contents of the cheques. After giving opportunities to both the parties, the learned Judicial Magistrate dismissed the petition on the ground that the petitioner has ample opportunities to establish his defence through the witnesses and by way of other means.

3. Aggrieved against the orders of the Judicial Magistrate, (Fast Track), Omalur, in C.M.P.Nos.98 & 99 of 2013, the revision petitioner is before this Court with the present criminal revisions.

4. The main contention of the learned counsel for the petitioner is that to get an expert opinion in respect of age of the ink written on the cheques, is the vital issue to be decided in the entire case on hand. For which he preferred the C.M.P.Nos.98 & 99 of 2013 under Section 45 of the Indian Evidence Act. The same was dismissed on 21.06.2013. To support his contention the learned counsel for the revision petitioner placed reliance on the Judgment reported in **2011 (3) CTC 616 Elumalai Vs. Subbaramani**

5. The learned counsel for the respondents would submit that mere comparison of the hand writing found in the cheques and pay-in-slips will not be relevant to this case. Even if it is proved that the hand writing found in all the documents are one and the same it will not be useful to the defence of the petitioner or to rebut the presumption which is in favour of the respondents, because as per law the holder of the Negotiable Instrument is empowered to fill up it and it is presumed

that the Negotiable Instrument is supported by consideration unless the contrary is proved. He further contended that once the signature in the cheques are admitted, there is no necessity to send the cheques in question to forensic experts for comparison of handwriting. Hence the relief sought by the petitioner cannot be granted.

6. Heard both sides and perused the materials available on record.

7. It is revealed that the difference of ink and the age of the ink found in the signature and the manual contents of the cheques in question cannot be determined by an expert. Hence, no purpose would be served in sending the cheques to an expert in order to ascertain the age of the ink and difference in the ink used. Further as per the report of Assistant Director, Central Forensic Laboratory, Andhra Pradesh, no such facility is available in India to ascertain the age of the ink and it is impossible and so it is decided that the petitioner is not entitled to get the relief sought for in this Criminal Revision, regarding to find out the difference and age of ink as he prayed for. Therefore, the learned Judicial Magistrate, (Fast Track), Omalur, has rightly appreciated the material evidences and dismissed the C.M.P.Nos.98 &

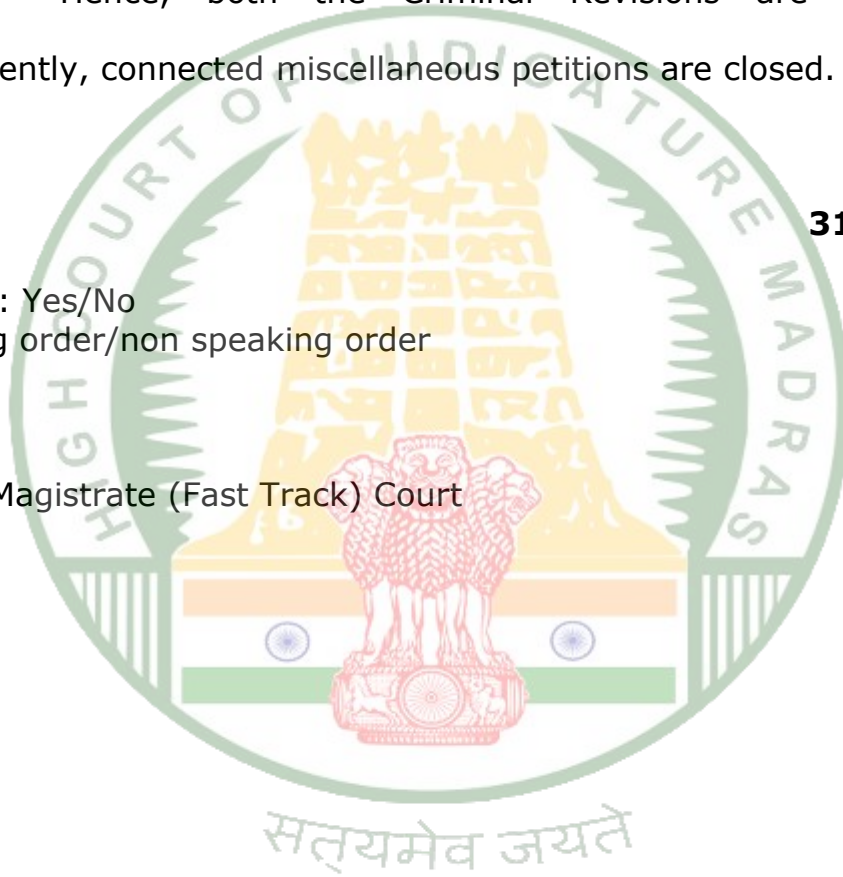
99 of 2013. Therefore, under these circumstances, this Court finds no perversity in the order passed by the learned Judicial Magistrate, (Fast Track), Omalur, in C.M.P.Nos.98 & 99 of 2013.

8. Hence, both the Criminal Revisions are dismissed. Consequently, connected miscellaneous petitions are closed.

31.08.2018

Index : Yes/No
Speaking order/non speaking order
Jer

To
Judicial Magistrate (Fast Track) Court
Omalur.



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P.VELMURUGAN, J.,

Jer



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