

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.07.2018
CORAM
THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl.OP.No.18076 of 2018
and
Crl.MP.No.9428 of 2018

S.Arul Prakasam

... Petitioner/ Appellant / Accused

Vs

M.Appadurai

...Respondent/Respondent/ Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking a direction to the Principal District & Sessions Judge, Thiruvallur to send the cheques pertaining to STC No.93 of 2016 before the Fast Track Court, Ambattur and all the documents filed under Section 45 & 73 of the Indian Evidence Act for expert opinion for the purpose to verify and corroborate the hand writing in the disputed documents filed by the accused/appellant.

For Petitioner : Mr.G.Parthasarathy

O R D E R

This Criminal Original Petition has been filed seeking a direction to the Principal District & Sessions Judge, Thiruvallur to send the cheques pertaining to STC No.93 of 2016 before the Fast Track Court, Ambattur and all the documents filed under Sections 45 & 73 of the Indian Evidence Act for expert opinion to verify and corroborate the handwriting in the disputed documents filed by the accused/appellant.

2. For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant respectively.

3. It is the case of the complainant that the accused borrowed Rs.12 lakhs on 27.01.2014 and towards discharge of the said debt, the accused gave the impugned cheque dated 07.12.2015; that the complainant presented the cheque on 07.12.2015 and the same was returned for "insufficient funds"; that the complainant issued a legal notice dated 10.12.2015 to the accused under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act"), and the same was returned unserved with an endorsement "Door locked intimation delivered"; since the accused did not make the payment, the complainant

initiated a prosecution in STC.No.93 of 2016 and a full fledged trial was conducted by the Judicial Magistrate, Fast Track Court, (Magisterial Level), Ambattur, in which, the complainant was examined as PW1 and subjected to cross-examination. On behalf of the complainant, 9 exhibits were marked. The accused was questioned under Section 313 Cr.P.C. and he stated that he has returned the loan amount to the complainant, however, a false case has been foisted against him. Thereafter, two witnesses were examined on behalf of the accused viz., DW1 and DW2 and one exhibit was marked on behalf of the accused. After considering the evidence on record, the trial Court, by judgment dated 31.01.2017, has convicted the accused under Section 138 of the NI Act and sentenced him to undergo 5 months Simple Imprisonment and pay Rs.12 lakhs, i.e. the cheque amount as compensation to the complainant within one month, in default to undergo further period of one month Simple Imprisonment. Challenging the conviction and sentence, the accused has filed C.A.No.27 of 2017 and the same is now pending on the file of the Principal District and Sessions Court, Tiruvallur. In fact, this Court on 23.04.2018 in CrI.OP.No.8399 of 2018, has directed the Appellate Court to dispose of C.A.No.27 of 2017 within three months from the date of receipt of a copy of that order. Under such circumstances, the accused has filed the present petition with the above prayer.

4. Heard Mr.G.Parthasarathy, learned counsel for the accused, who submitted that the handwriting in the impugned cheque is not that of the accused and that it is that of one Y.Kajanawas, learned counsel for the complainant.

5. However, on a perusal of the evidence on record adduced during trial and also the trial Court judgement, it is seen that the accused has not taken a defence that it was Y.Kajanawas, who had filled the impugned cheque. On the contrary, the defence of the accused is that he has signed the impugned cheque, however, the loan amount has been returned to the complainant. In order to discharge the burden under Section 138 of the NI Act, the accused has examined two witnesses viz., DW1 & DW2. The trial Court has discussed all these aspects and has ultimately, negatived the defence of the accused and had convicted and sentenced him accordingly. Under Section 391 Cr.P.C, additional evidence can be adduced even in the Appellate Court, provided, new evidence which was hitherto unknown surfaces and which will have a bearing on fact in issue, the same can be admitted as additional evidence before the Appellate Court. In this case, the accused has not taken such a plea in his defence before the trial Court and for the first time, he is coming up with such a plea.

6. Be that as it may, in the light of the contention of the accused that he had signed the cheque, the writing in the cheque pales into insignificance. In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

mk

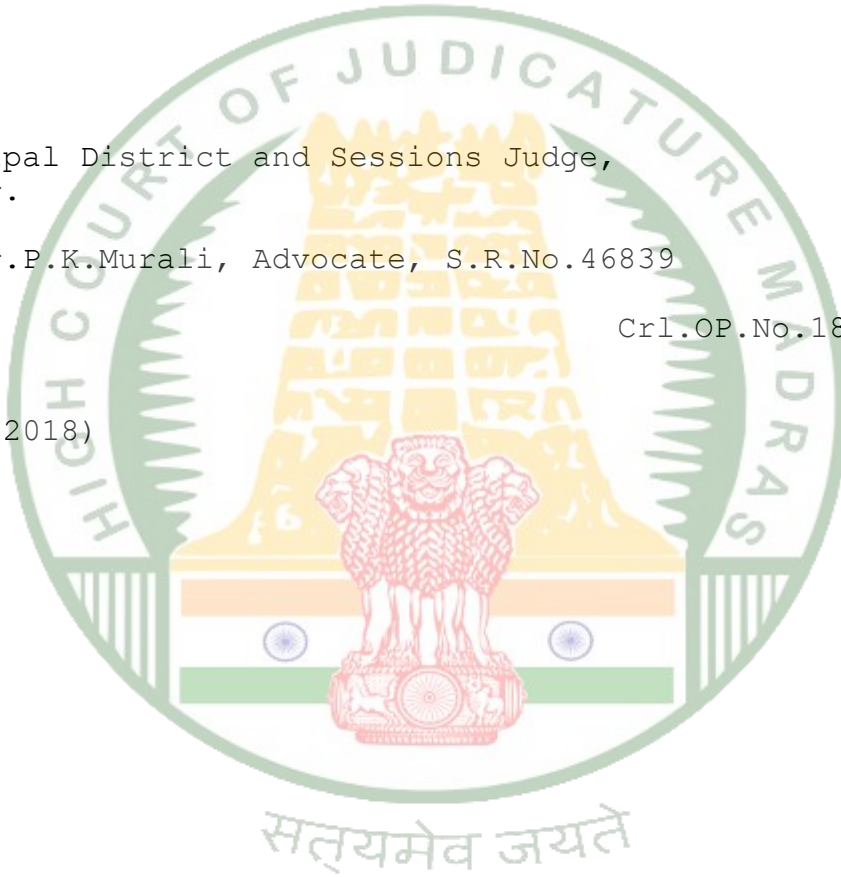
To

The Principal District and Sessions Judge,
Tiruvallur.

+3cc to Mr.P.K.Murali, Advocate, S.R.No.46839

Cr1.OP.No.18076 of 2018

MR (CO)
GSP (26/07/2018)



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