

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1212 of 2018 and  
Crl.M.P.No.14267 of 2018

Mr.K.Kothandaraman

... Petitioner

Vs.

Mr.K.Ramesh

... Respondent

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order passed by the learned XX Metropolitan Magistrate, Egmore at Allikulam in Crl.M.P.No.1456 of 2018 dated 27.08.2018 in C.C.No.2767 of 2017 pending trial before the XX Metropolitan Magistrate, Egmore at Allikulam.

For Petitioner : Mr.P.Kumaresan  
For Respondent : Mr.T.Arockiadass for  
M/s.Dass and Viswa Associates

O R D E R

The present revision case has been filed against the order passed by the learned XX Metropolitan Magistrate, Egmore at Allikulam in Crl.M.P.No.1456 of 2018 dated 27.08.2018 in C.C.No.2767 of 2017.

2. The facts which gave rise to file this revision case are stated hereunder:-

(i) The petitioner herein had borrowed a sum of Rs.26 lakhs from the respondent/complainant. In discharge of the loan, the petitioner has given three cheques of 10 lakhs each dated 09.01.2017, drawn on Indian Bank, Porur Branch, Chennai-116. When the cheques were presented, they were returned with an endorsement "funds insufficient". Thereafter, a complaint was filed by the respondent under Section 138 of the Negotiable Instruments Act before the learned Metropolitan Magistrate (Fast Track Court-II), Egmore, Chennai, which was numbered as C.C.No.2767 of 2017 and subsequently, the same was transferred to the learned XX Metropolitan Magistrate, Egmore at Allikulam.

(ii) During the course of examination of the prosecution evidence, the respondent/complainant filed a proof affidavit and marked 14 documents including the cheques which were marked as

Ex.P1, Ex.P3 and Ex.P5 and it was found in the said exhibits that the signature is contrary to the petitioner's handwriting. In order to verify the contents of the cheque, the petitioner herein filed a petition under Section 45 of the Indian Evidence Act for forensic opinion for comparison of the contents of the cheque with the signature of the petitioner. However, the Trial Court after hearing the parties, had dismissed the petition on 27.08.2018 and the said dismissal order is put to challenge in the present revision case.

3. The learned counsel for the petitioner would at the outset submit that the Trial Court has clearly misdirected itself by dismissing the petition on the ground that the petitioner asked to ascertain the age of the ink of the signature found in the cheque, whereas, what the petitioner/accused was interested was, only in regard to the contents of the cheque with the signature, as according to the petitioner herein, the cheques had been filled upon by the respondent/complainant on his own and there was no legally enforceable debt. Unfortunately, the learned Trial Court has mistaken the petition and dismissed the same on the ground that there was no expert to find out the age of the ink and the documents cannot be sent anywhere for the purpose of getting opinion regarding the same. The learned Trial Court, according to the learned counsel for the petitioner has also erred in stating that in view of the admission of the signature by the petitioner himself, no necessity to send the documents for forensic expert opinion, even in regard to handwritten contents of the cheque.

4. The learned counsel appearing for the respondent strongly objected any relief being granted to the petitioner/accused, since the issue is directly covered by the Judgment of this Court reported in 2010 (1) CTC 424. The decision is regarding the age of writing, which cannot be done due to non-availability of scientific method. Therefore, the learned counsel would submit that the Trial Court has rightly dismissed the petition.

5. This Court is unable to appreciate the arguments advanced on behalf of the respondent that the learned counsel for the petitioner at the outset itself submitted that he was not concerned with the age of the ink, he was only concerned with the contents of the cheque with the signature of the petitioner and such can always be verified by the forensic experts and comparison can be made. The learned counsel for the petitioner would rightly submit that when the contents of the cheque is ascertained by comparing with the signature by the forensic experts, it would help the petitioner/accused to establish his defence, particularly, when there was no

enforceable debt against him at the instance of the respondent.

6. The learned counsel for the petitioner has also submitted that it is not correct on the part of the respondent to say that the petition filed by him was intended to drag the proceedings and to avoid facing trial. He further submitted that some time may be fixed for carrying out the analysis by the forensic expert.

7. This Court is in agreement with the submissions made on behalf of the petitioner and is also of the considered view that no prejudice would be caused to the respondent/complainant, if the contents of the cheque is analyzed by the forensic experts.

8. In view of the above, the impugned order passed by the learned XX Metropolitan Magistrate, Egmore at Allikulam in CrI.M.P.No.1456 of 2018 dated 27.08.2018, is hereby set aside and the petition filed by the petitioner herein stands allowed.

9. The Trial Court is directed to send the cheques (Exs.P1, P3 and P5) for forensic opinion in order to compare the contents of the cheque with the signature of the petitioner. This shall be done within a period of four weeks from the date of receipt of a copy of this order.

10. The Revision case is disposed of on the above terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsk

To

The XX Metropolitan Magistrate,  
Allikulam, Egmore,  
Chennai.

+1cc to Mr.P.Kumaresan, Advocate, S.R.No. 81001

+1cc to Mr.Dass & Viswa Associates, Advocate, S.R.No. 80369

CrI.R.C.No.1212 of 2018

MP (CO)  
GN(08/01/2019)