



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.04.2018

DELIVERED ON : 20.06.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

CrI. R.C.(MD)No.199 of 2018

and

CrI.M.P.(MD)No.2632 of 2018

C.Kannan

.. Petitioner/Accused

Vs.

V.Murugan

.. Respondent/Complainant

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to set aside the dismissal order dated 09.03.2018 in Cr.M.P.No.1680 of 2018 in C.C.No.360 of 2014 on the file of the Judicial Magistrate No.I, Sivakasi.

For Petitioner : Mr.S.Selvakumar

For Respondent : Mr.M.Jothibas

ORDER

Heard Mr.S.Selvakumar, learned counsel appearing for the petitioner and Mr.M.Jothibas, learned counsel appearing for the respondent.

2.This Criminal Revision has been filed to set aside the dismissal order passed by the learned Judicial Magistrate No.I, Sivakasi made in Cr.M.P.No.1680 of 2018 in C.C.No.360 of 2014 dated 09.03.2018.

3.On the side of the petitioner, it is stated that the respondent herein filed a petition in C.C.No.360 of 2014 before the learned Judicial Magistrate No.I, Sivakasi under Section 200 of Cr.P.C. and Section 138 of Negotiable Instruments Act, wherein the petitioner herein is the accused. It is stated that on 01.05.2014, the petitioner borrowed a sum of Rs.6,00,000/- (Rupees Six Lakhs only) from the respondent and the petitioner issued a promissory



note on the same day. It is stated that when the respondent demanded the amount, the petitioner issued a cheque on 07.08.2014. The cheque was dishonoured with an endorsement of "Exceeds arrangement" on 11.08.2014. The respondent filed a private complaint against the petitioner in C.C.No.360 of 2014.

4.The petitioner filed a petition in Cr.M.P.No.1680 of 2018 under Section 45 of the Indian Evidence Act to send the disputed cheque to handwriting expert to compare the signature of the petitioner found in the cheque with the other writings found in the cheque and also to find out whether both the signature and other writings found in the cheque have been written by the petitioner. After perusing the documents, the learned Judicial Magistrate No.I, Sivakasi dismissed the petition.

5.On the side of the petitioner, it is stated that the petitioner and the respondent were running a Cable TV operating concern. Due to misunderstanding, the respondent went away from the business. The defence of the petitioner is that one Jeyaraj has taken some blank cheques from the petitioner's office and using the same through the respondent and has filed a case against the petitioner.

6.On the side of the petitioner, it is further stated that the statement of the respondent is that the petitioner got loan and issued a pronote and then issued a cheque leaf. The respondent did not take any steps to prove the similarity between the contents and the signature in the Ex.P.-1. Unless the document Ex.P1 is sent for an expert opinion to find out the age of the ink and variance between the signature and other contents, it is difficult for the petitioner to prove his case.

7.On the side of the respondent, it is stated that the complaint was filed in the year 2014 and the trial was started in the year 2017 only. After 313 proceedings, when the matter was posted for defence side evidence, the petitioner side has re-opened the case for three times for further cross-examination of P.W.1. During all these proceedings, the petitioner has not come forward with a petition for an expert opinion. Moreover, the petitioner has not denied the signature in the cheque but only questioning the contents of cheque and the difference in the ink.

8.On the side of the respondent, it is stated that when the signature is not disputed, question of ascertaining the age of the ink does not arise. A decision reported in Jai Aanuman Jewellery V. P.Murugan case reported in 2015 (3) MWM (Cr) DCC 155(Mad) is cited.

9.It is argued that only to drag on the proceedings that too after the matter is posted for accused side witness, the petitioner has come forward with this petition. On the side of the respondent, it is further stated that under Sections 143 to 147 of N.I.Act



provisions are laid down for a speedy trial. A judgment published in 2017 (3) MWM (Cr.) DCC 161 (SC) in Meters and Instruments Private Limited V. Kanchan Mehta is cited.

10. On the side of the petitioner, it is stated that the petitioner is having a right to send the document for verification by an expert and that it is the duty of the complainant to take necessary steps for comparison of the signature. A judgment reported in 2016 (3) MWN Criminal DCC 123 in K.Ragu v. V.Bhuvaneshwaran is cited.

11. Records Perused.

12. It is the case of the petitioner, that the respondent and one Jeyaraj has taken away the cheque from this petitioner. The petitioner insists that the signature is to be compared with the signature of the other cheque leaves as he is not satisfied with the signature found in the cheque in question. The petitioner has further questioned the variation in the ink that was used for writing the contents with the ink used for the signature.

13. The petitioner has filed a petition before the trial Court for comparing the signature with the contents and for finding out the age of the ink used in the contents and the age of the ink used for signature. But before this Court, the petitioner has stated that the signature is to be compared with admitted signature. It is stated that the petitioner has recalled P.W-1 three times for further cross-examination. Under Section 73 of the Indian Evidence Act, the Court can peruse and compare the disputed document with the admitted documents. In the judgment cited by the petitioner, the accused in that case has not admitted the signature, in the cheque, whereas in this case, the petitioner has not raised any such objections.

14. In these circumstances, it is clear that the petitioner is trying to drag on the proceedings and there are no merits in the petition. Therefore, this Court is of the view that the petition is liable to be dismissed.

15. Accordingly, this Criminal Revision Case is dismissed. Consequently, CrI. M.P. (MD) No. 2632 of 2018 is closed.

Sd/-  
Deputy Registrar  
(Lok Adalat/M & C)

/True Copy/

Sub Assistant Registrar



The Judicial Magistrate No.I,  
Sivakasi.

+1cc to M/S.S.Selvakumar, Advocate SR.No. 68869  
+1cc to M/S.G.M.Law Office, Advocate SR.No. 68795

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JM/SKN RSK/SAR 4/09.07.2018/4P/4C