



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.04.2018

DELIVERED ON : 21.06.2018

WEB COPY

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THE HONOURABLE MRS. JUSTICE R. THARANI

CrI. R.C.(MD)No.448 of 2017

and

CrI.M.P.(MD)No.4739 of 2017

Sounder Raj

.. Petitioner

Vs.

Selvaraj

.. Respondent

Prayer : This revision case is filed under Sections 397(1) r/w. 401 of Cr.P.C., to call for the records in C.M.P.No.92 of 2017 in S.T.C.No.469 of 2012 on the file of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District and set aside the same.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : Mr.R.Sreenivasan

#### ORDER

Heard Mr.A.Thiruvadi Kumar, learned legal aid counsel appearing for the petitioner and Mr.R.Sreenivasan, learned counsel appearing for the respondent.

2.This revision case has been filed to set aside the order passed by the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District in C.M.P.No.92 of 2017 in S.T.C.No.469 of 2012, wherein the petition filed under Section 45 of Indian Evidence Act and Section 293 of Cr.P.C., was dismissed by the learned Magistrate.

3.On the side of the petitioner, it is stated that the petitioner filed the petition seeking an expert opinion which was dismissed by the lower Court. It was the specific defence of the petitioner that the cheque in dispute is misused by the complainant/respondent herein. It is stated that the petitioner borrowed a sum of Rs.1,00,000/- (Rupees One Lakh only) from the respondent on 05.06.2012. To discharge the loan, the petitioner has issued a cheque on 05.07.2012. When the respondent presented the cheque for encashment, it was returned as 'insufficient funds'. P.W.1 was cross examined in which he has stated that the petitioner is not liable to pay any amount. The petitioner has to revert the presumption under the Negotiable Instruments Act and for reverting the presumption expert opinion is necessary. It is stated that the



signature in the cheque and the signature in the acknowledgement card were not the same. He prayed to set aside the order of the lower Court.

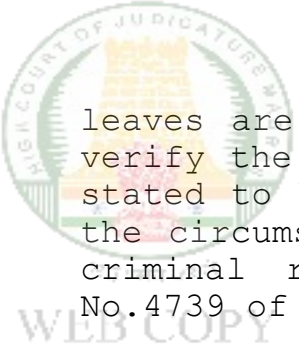
4. On the side of the respondents, it is stated that the cheque was already filed along with the suit. Hence, there is no need for the petitioner to wait till trial. This Expert Opinion petition is filed only after a lapse of 5 years. The petitioner has not denied the signature. He has stated that there is theft of signed cheque leaves. The petitioner is having the habit of changing the hand writing and he has put the date of signature in the acknowledgement card. No documents are produced and hence no expert opinion is necessary.

5. On the side of the petitioner, it is stated that only after the complainant's side evidence was over, the revision petitioner/respondent can take steps to prove his side. P.W.1 was cross examined on 09.11.2016. Only after the cross examination of P.W.1, the revision petitioner has filed this petition and there is no delay on the part of the revision petitioner.

6. The learned counsel appearing for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of Kalyani Baskar v. M.S.Sampoornam reported in 2007(2) CTC 364 which reads as follow:

"Signature of cheque may be sent for expert opinion to ascertain bonafide - Neither Appellant nor her husband owe an debt to complainant - Duty and power of Magistrate when there is dispute regarding signature - Magistrate to send cheque in question to expert opinion to ascertain correctness and genuineness of signature of appellant - Categorical denial of signature at initial stage of appearance - Magistrate holding enquiry under Cr.P.C. in respect of offence triable by him does not exceed his powers under Section 243(2), if in interest of justice Magistrate sends document for enabling same to be compared by hand writing expert."

7. It is stated that under Section 138 of the Negotiable Instruments Act, the revision petitioner is having the duty to revert the presumption. At the same time, the revision petitioner has filed the counter affidavit in O.S.No.18 of 2015 and I.A.No.31 of 2015 stating that he has settled the cheque case in S.T.C.No.469 of 2012. There is nothing wrong in the Judicial Officer comparing the signature. The petitioner has not adduced his side evidence. No necessity for the petitioner to wait till the complainant's side evidence in the case is over and that it does not mean that he can take five years to file an expert opinion petition. In these circumstances, there is undue delay of five years. The factum that the counter affidavit was filed is not denied by the revision petitioner herein wherein it is stated that only signed cheque



leaves are stolen. If needed the concerned Judicial Magistrate can verify the admitted signature in the vakalath and in the sale deed stated to have been executed by the revision petitioner herein. In the circumstances, there is no merits in the petition. Hence, this criminal revision case is dismissed. Consequently, Crl.M.P.(MD) No.4739 of 2017 is closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,  
Padmanabapuram, Kanyakumari District.

+1cc to M/S.A.Thiruvadi Kumar, Advocate SR.No. 69223

+1cc to M/S.R.Sreenivasan, Advocate SR.No. 69209

Crl. R.C.(MD)No.448 of 2017  
21.06.2018

mrn

JM/SV MMS/SAR 3/29.06.2018/3P/4C