



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.04.2018

DELIVERED ON : 07.06.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

CrI. R.C.(MD)No.784 of 2017

and

CrI. M.P.(MD)No.9435 of 2017

C.Manikandan

.. Petitioner /Petitioner/Accused

Vs.

T.Ilamathi

.. Respondent/Respondent/Complainant

Prayer : This revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to set aside the order of the learned Fast Track Court (Magisterial Level), Karaikudi in Cr.M.P.No.2029 of 2017 in S.T.C.No.118 of 2016 dated 16.09.2017.

For Petitioner

: Mr.K.Vinayagan

For Respondent

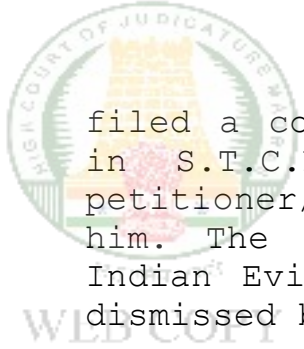
: Mr.D.Venkatesh

ORDER

Heard Mr.K.Vinayagan, learned counsel appearing for the petitioner and Mr.D.Venkatesh, learned counsel appearing for the respondent.

2.This revision case has been filed to set aside the order passed by the learned Fast Track Court (Magisterial Level) in Cr.M.P.No.2029 of 2017 in S.T.C.No.118 of 2016 dated 16.09.2017.

3.The complainant is alleged to have lend a loan of Rs.5,00,000/- to the petitioner on 26.07.2013 and the petitioner executed a mortgage deed in Document No.1728/2013 before the Sub Registrar, Karaikudi. On 15.11.2015, the petitioner issued two cheques each for a sum of Rs.2,50,000/- withdrawn from Andra Bank, Karaikudi. It is stated that when the complainant presented the cheque for collection, they were returned as 'insufficient funds' on 01.12.2015. Thereafter, after giving notice, the complainant



filed a complaint before the learned Fast Track Court, Karaikudi in S.T.C.No.118/2016, dated 16.09.2017. The defence of the petitioner/accused in the case is that Ex.P.1 is not executed by him. The petitioner filed a petition under Section 45 of the Indian Evidence Act for getting expert opinion and the same was dismissed by the lower Court.

4.On the side of the petitioner, it is stated that the respondent trespassed into the premises of the petitioner and grabbed two cheques. The cheque are not given by the petitioner and the amount was not filled by the petitioner and hence, the expert opinion is necessary.

5.On the side of the respondent, it is stated that the case advanced by the petitioner is that the cheque is obtained only by force. The signature of the cheque is admitted by the petitioner. Under Section 20 of Negotiable Instruments Act, when the signature is admitted by the petitioner that amounts to admitting the recitals in the cheque leaf. Once the signature is admitted, the petitioner cannot question the contents of the document. The petitioner has not filed any contemporary documents for verification. It is stated that it is a usual practice for the petitioner and his brother to get loan from the respondent. The petitioner's brother also got loan and gave two cheque leaves. The statement that the petitioner obtained the cheque leaves forcibly is wrong.

6.The learned counsel for the respondent placed reliance on the order passed by this Court in the case of *S.Gopalakrishnan Vs. K.Kathirvel* in Crl.R.C.No.867 of 2014, which reads as follows:

"6.On perusal of records it is clear that the respondent/accused admitted the signature found in the alleged cheque bearing No.064431 dated 27.09.2012, since, he admitted the signature in the cheque, it is useful to refer the authority cited on the side of the petitioner reported in 2008 (1) CTC 491 - S.Gopal V. D.Balachandran, which reads as follows :-

"9.The aforesaid authority does not run counter to the provision under Section 20 of the Negotiable Instruments Act. As rightly observed therein, there is no law which prescribes that a cheque shall be filled up by the drawer himself. If such proposition is accepted, no unlettered person, who knows only to sign his name, can ever be a drawer of a cheque. Further, a person who is physically incapacitated to fill up the cheque cannot also draw a cheque and negotiate it. Of Course, as far as the other negotiable instruments viz., promotes and bills of exchange, there is a clear mandate under Section 20 of the Negotiable Instruments Act to the effect that such an instrument can be negotiated by the maker thereof



by simply signing and delivering the same to the holder in due course giving thereby simply signing and delivering the same to the holder in due course giving thereby ample authority to the latter to fill up the content of the instrument as intended by the maker thereof.

10. Even in case of a cheque, as there is no clear provision in the Negotiable Instruments Act, in the light of the above discussion, the Court finds that if a drawer of a cheque gives authority to the payee or holder in due course or a stranger for that matter to fill up the cheque signed by him, such an instrument also is valid in the eye of law. There is no bar for the drawer of the cheque to give authority to a third person to fill up the cheque signed by him for the purpose of negotiating the same."

7. It is stated that when the accused admitted the signature found in the alleged cheque, there is no law which prescribes the cheque will be filled by the drawer himself.

8. The learned counsel for the respondent also relied upon the order passed by this Court in the case of *R. Jayanthi v. S. Shanthi* in Criminal Revision Case No. 675 of 2015, which reads as follows:

"5. In my judgment reported in 2012 MLJ (Crl.) 586, *Babu vs. Vinayagam*, I have categorically held that insofar as to the cheque dishonour case is concerned, if the signature in the cheque is admitted by the petitioner, thereafter, he cannot say, who has to fill up the cheque. As per Section 20 of the Negotiable Instruments Act, a holder in due course is authorised or empowered to fill up an instrument so as to make it a negotiable instrument."

9. Records perused. A Perusal of the records reveals that the petitioner has not denied the borrowal of a sum of Rs. 5,00,000/- (Rupees Five Lakhs only). The petitioner has accepted the signature in the cheque leaves. The only denial of the petitioner is that the petitioner did not fill up contents of the cheque leaves. When the signature is admitted thereby the petitioner admitted the contents of the document and hence, sending the documents for handwriting expert is not necessary. If needed the learned Magistrate can compare the signature found in the cheque with that of the admitted signature of the petitioner in the vakalath and any other documents which was produced and admitted by the petitioner and then he can come to a conclusion regarding the signature. The petition for expert opinion will

<https://hccasescourtservices.in>

delay in the proceedings.

10. Hence, this criminal revision petition is dismissed. No



Costs. Consequently, Crl. M.P.(MD)No.9435 of 2017 is closed.

Sd/
Assistant Registrar(RTI)

/True copy/

WEB COPY

Sub Assistant Registrar

To

The Judicial Magistrate,
Fast Track Court, Karaikudi.

+1cc to Mr.D.VENKATESH, Advocate, SR.No. 67205

Crl. R.C.(MD)No.784 of 2017
07.06.2018

MRN

KK/SV MMS/SAR-4/19.06.2018/4P-3C