



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Crl.R.C. (MD)No.952 of 2017

and

Crl.M.P. (MD)No.11661 of 2017

Krishty

: Petitioner

Vs.

Mariya Visvasa Boulín

: Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to set aside the order of the learned Judicial Magistrate, Valliyoor, Tirunelveli District, dated 21.07.2017 made in Crl.M.P.No.7035 of 2016 in C.C.No.39 of 2015 and consequently, direct the cheques in question to be sent for the expert opinion with regard to its signatures and also to compare the same with the admitted signature as annexed in the criminal revision petition and submit the report forthwith to the Court concerned.

For Petitioner

: Mr.J.Sankarapandian

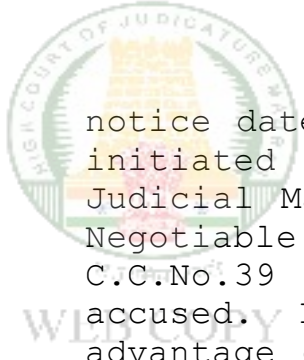
For Respondent

: Mr.R.Balakrishnan

ORDER

For the sake of convenience, the parties will be referred to as the complainant and the accused.

2. It is the case of the complainant that on 22.06.2014 the accused borrowed Rs.16,00,000/- (Rupees Sixteen Lakhs only) from the complainant for the purpose of her daughter's marriage and also for her house construction promising to return the amount in five months in installments. In discharge of the said liability, the accused gave two cheques for Rs.8,00,000/- each, both dated 24.12.2014 in favour of the complainant. The complainant presented both the cheques on 24.12.2014 and the bank of the accused returned the cheques on 26.12.2014 on the ground that '**signature varies**'. The complainant issued a statutory notice on 31.12.2014 to the accused, in response to which, the accused issued a reply



notice dated 13.01.2015 to the complainant. Hence, the complainant initiated a prosecution in C.C.No.39 of 2015 before the learned Judicial Magistrate, Valliyoor, under Sections 138 and 142 of the Negotiable Instruments Act against the accused. Trial began in C.C.No.39 of 2015 and the complainant was cross-examined by the accused. In the cross-examination of the complainant, taking advantage of the difference in the signature, the accused has set up a defence that she had given two totally blank cheques to the complainant as security for having taken the Poultry Farm of the complainant on lease and that the complainant has forged the signature of the accused and had presented the two cheques resulting in their dishonour on the ground of signature varying. Not satisfied with that defence, the accused filed Cr.M.P.No.7035 of 2016 in C.C.No.39 of 2015 under Section 45 of the Indian Evidence Act to send the two cheques to the Handwriting Expert for opinion. This petition has been dismissed by the Trial Court on 21.07.2017, aggrieved by which, the accused has filed the present Criminal Revision Case.

3. Heard Mr.J.Sankarapandian, learned counsel for the accused and Mr.R.Balakrishnan, learned counsel for the complainant.

4. Mr.J.Sankarapandian, learned counsel for the accused submitted that the burden under Section 139 of the Negotiable Instruments Act is on the accused and, therefore, it is the duty of the accused to disprove the signature in the two cheques. He submitted that the Trial Court should have given a fair opportunity to the accused by sending the two cheques to the Handwriting Expert for comparison with the admitted signatures of the accused.

5. Per contra, Mr.R.Balakrishnan, learned counsel for the complainant refuted the contentions.

6. This Court gave its anxious consideration to the rival submissions.

7. It is seen that in the reply notice dated 13.01.2015 issued by the accused, she had taken a stand that she had given those two cheques as security to the complainant for having taken her Poultry Farm on lease. The accused has further contended that at the time when she handed over the Poultry Farm to the complainant, she demanded the return of the two cheques, but the complainant told her that the two cheques were lost.

8. From the above, it is apparent that the accused has admitted the issuance of the two cheques, but the contention that she had handed over two blank cheques without even affixing the signature of the accused to the complainant as security for taking the Poultry Farm on lease defies credibility. It must be borne in mind that the Explanation to Section 464 of the Indian Penal Code reads as



follows:

"Explanation 1.- A man's signature of his own name may amount to forgery."

9. This Court does not want to go into this aspect at this stage. Under such circumstances, this Court does not find any infirmity in the order passed by the Court below warranting interference. Hence, this revision is devoid of merits and accordingly, the same is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Valliyoore,
Tirunelveli District.

+ 1 cc TO Mr.S.Palani Velayutham , Advocate in SR No. 55453

SML

AE/KKR/SAR1/27.03.2018/3P/3C

Order made in
Cr1.R.C. (MD) No.952 of 2017
Dated:-**14.03.2018**