



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)Nos.310 of 2018

and

Crl.O.P(MD).No.9614 of 2018

and

Crl.M.P(MD).Nos.4281 and 4269 of 2018

Vijaya : Petitioner in both petitions

Vs.

Wilson : Respondent in both petitions

PRAYER in Crl.R.C(MD)Nos.310 of 2018: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records and set aside the order passed by the learned Judicial Magistrate, Padmanabhapuram, dated 01.03.2018 in C.M.P.No.5001 of 2017 in STC.No.558 of 2016 as illegal.

PRAYER in Crl.O.P(MD).No.9614 of 2018: Petition filed under Section 482 of Criminal Procedure, to call for the records and set aside the order passed by the learned Judicial Magistrate, Padmanabhapuram, dated 01.03.2018 in C.M.P.No.5000 of 2017 in STC.No.558 of 2016 as illegal.

(In both petitions)

For Petitioner : Mr.G.Aravinthan in both petitions

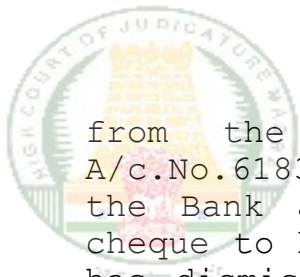
For Respondent : No appearance in both petitions

COMMON ORDER

Heard the learned counsel appearing for the petitioner in Crl.R.C.(MD).No.310 of 2018 and Crl.O.P(MD).No.9614 of 2018.

2.The brief facts are as under:-

The petitioner herein is arrayed as an accused in STC.No.558 of 2016, on the file of the learned Judicial Magistrate, Padmanabhapuram, alleging that she has issued cheque for a sum of Rs.6,00,000/- (Rupees Six Lakhs only) to the respondent and the same has bounced. Hence, she has committed an offence under Section 138 of Negotiable Instruments Act, 1881. Denying the signature found in the cheque, the petitioner herein has filed two applications. One application in C.M.P.No.5001 of 2017 was to send the disputed documents for comparison with the admitted document and the other application in C.M.P.No.5000 of 2017 was to call for the records



from the Syndicate Bank, Mulagumoodu Branch pertaining to A/c.No.61832200125467 regarding the specimen signature maintained by the Bank and disputed signature, namely, signature found in the cheque to be compared with the admitted signature. The trial Court has dismissed both the applications on the ground that instead of taking the opinion of an expert, as per Section 45 of the Indian Evidence Act, 1872, the Court below itself can compare it by naked eye under Section 73 of the Indian Evidence Act, 1872.

3.It is contended by the petitioner herein that the respondent being accused for issuing cheque, without sufficient fund, should be mulcted with statutory presumption. It is duty to rebut the same and in order to rebut the said presumption, the best evidence is to compare the signature found in the cheque with the admitted signature.

4.When the accused herself is ready to subject the cheque for comparison by an expert, the Court below has denied the opportunity, despite pronouncement of the Hon'ble Supreme Court and High Court regarding Section 73 of the Indian Evidence Act, 1872. Thus, according to the petitioner, the view taken by the Court below that the Court below itself can compare it by naked eye under Section 73 of the Indian Evidence Act, 1872 is not sustainable, which cannot substitute the opinion of an expert.

5.This Court finds force in the submission made by the learned counsel appearing for the petitioner. Hence, the Criminal Original Petition and the Criminal Revision Case are allowed and the orders passed by the trial Court dated 01.03.2018 made in C.M.P.No.5000 of 2017 in STC.No.558 of 2016 and C.M.P.No.5001 of 2017 in STC.No.558 of 2016 are set aside. The trial Court is directed to call for records under Section 91 of Criminal Procedure Code from the Syndicate Bank, Mulagumoodu Branch and also send the disputed document with an admitted signature for comparison by a scientific expert at the cost of the petitioner herein. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Judicial Magistrate, Padmanabhapuram.
2. The Branch Manager, Syndicate Bank,
Mulagumoodu Branch, Kanyakumari District.

+ 1 CC TO Mr.G.ARAVINTHAN, ADVOCATE IN SR No. 81544

RMK

TE/RSK/SAR-1 : 24/09/2018 : 2P/4C

<https://hcservices.ecourts.gov.in/hcservices/>

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Cr1.O.P(MD) .No.9614 of 2018
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