



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 09.07.2018
DELIVERED ON : 01.08.2018

CORAM :

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C. (MD) No.163 of 2016
and
Crl.M.P.(MD)No.2373 of 2016

C.Arumai Jebathurai ... Petitioner
vs.

T.K.Anitha ... Respondent

Prayer:- Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, to set aside the order dated 05.12.2015 passed in Cr.M.P.No.1884 of 2015 in C.C.No.22 of 2011 on the file of the District Munsif cum Judicial Magistrate, Boothapandi.

For Petitioner : Mr.R.J.Karthick
For Respondent : Mr.K.Sreekumaran Nair

ORDER

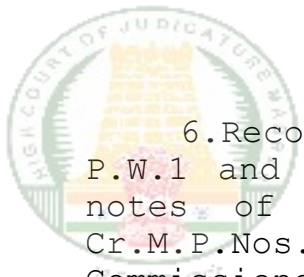
Heard Mr.R.J.Karthick, learned counsel appearing for the petitioner and Mr.K.Sreekumaran Nair, learned counsel appearing for the respondent.

2.This petition is filed to set aside the the order dated 05.12.2015 passed in Crl.M.P.No.1884 of 2015 in C.C.No.22 of 2011 on the file of the District Munsif cum Judicial Magistrate, Boothapandi.

3.The petitioner is the accused in C.C.No.22 of 2011. The petitioner has approached the respondent on 05.09.2010 and borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) and gave a cheque for the amount. Hence, the respondent has filed a case against the petitioner under Section 138 of Negotiable Instruments Act.

4.On the side of the petitioner, it is stated that the petitioner has not obtained any loan from the respondent and the writings in the cheque are not that of the petitioner. It is stated that the notes of lesson book and the signature in the cheque should be sent for expert opinion.

5.On the side of the respondent, it is stated that the signature in the cheque leaf was not denied by the petitioner and subsequently, the petitioner came up with this case and the petition is to be dismissed.



6. Records perused. The petitioner has examined one Sri Kumar as P.W.1 and has marked 3 documents, viz., Ex.P1 to Ex.P3 which are notes of lesson. It is seen that the petitioner has filed Cr.M.P.Nos.7792 and 7793 of 2014 for appointment of Advocate Commissioner and to send the disputed signature for expert opinion and the petition was dismissed by the trial Court and in the revision, this Court has directed the petitioner to file another petition before the lower Court.

7. On the side of the revision petitioner, it is stated that P.W.1 who was examined by the respondent is the Headmaster and he has deposed that the documents Ex.P1 to Ex.P3 are maintained by the respondent herself. These documents are in the custody of the respondent. The school in which the respondent is working is an Aided School run by her own family members. P.W.1 has not signed those documents. Ex.P1 to Ex.P3 are not reliable and the impugned order is liable to be set aside.

8. On the side of the respondent, it is stated that the petitioner has no authority to fill up the blank cheque. The petitioner is the Teacher and she has prepared notes of lesson to the students and sent the same to the Headmaster and the same cannot be tampered. The petitioner is not having the capacity to lend such a huge amount.

9. On the side of the petitioner, it is stated that P.W.1 has deposed that writings were not made in this presence and the documents are not reliable.

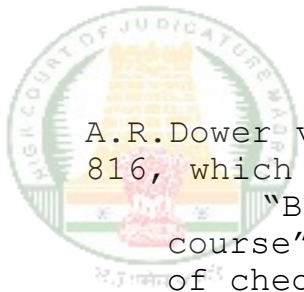
10. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of Babu v. Vinayagam reported in (2012) 4 MLJ (Cr1.) 586, which reads as follows:

"As per Section 20 of 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. In this case, the petitioner had admitted the entrustment of the cheques as well as promissory notes in blank and therefore, the respondent/complainant as a holder in due course, is entitled to fill up the cheques and that cannot be questioned by the petitioner/accused."

11. The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of S.Gopal v. D.Balachandran reported in AIR 2008 (NOC) 1300 (MAD.), which reads as follows:

"Section 20 applies only to blank promote and bill of exchange and not to blank cheques- however, if drawer of cheque gives authority to payee or holder in due course to fill up cheque signed by him- such a cheque is valid"

12. The learned counsel appearing for the respondent relied on the Judgment passed by the Lahore High Court in the case of



A.R.Dower v. Sohan Lal Anand and others reported in AIR 1937 Lahore 816, which reads as follows:

"Blank cheque drawn dishonoured by Bank-"Holder in due course" of such cheque cannot hold drawer liable for amount of cheque on dishonour"

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13.The learned counsel appearing for the respondent relied on the Judgment passed by the Kerala Court in the case of C.T.Joseph v. I.V.Philip, in AIR 2001 Kerala 300, which reads as follows:

"Section 20 not applicable because it applies only with regard to inchoate negotiable instruments"

14.The learned counsel for the respondent relied on the Judgment passed by this Court in the case of T.K.Anitha v. Arumai Jebadurai in CrI.R.C.(MD)Nos.17 and 19 of 2015, which reads as follows:

"However, the revision petitioner/accused is at liberty to file one more application under Section 45 of the Indian Evidence Act by producing her 'Contemporaneous Signature' of the year, in which the cheque in question was said to have been drawn."

15.Records perused. At this juncture, it is proper to note that the document produced by the respondent before the trial Court is notes of lesson which have been prepared by her during the course of teaching but the document is in her custody and the School was run by her own family members and the notes of lesson have no other signature for being inspected by the authorities. The respondent has failed to comply with the order of this Court by not producing the acceptable documents for verification of the handwriting. P.W.1 is the Headmaster in the School which was run by the family members of the respondent. The evidence of P.W.1 and documents Ex.P1 to Ex.P3 cannot be wholly relied upon. In the circumstances, the order of the trial Court is to be set aside and this Criminal Revision Case is allowed. Consequently, CrI.M.P.(MD)No.2373 of 2016 is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The District Munsif cum Judicial Magistrate, Boothapandi.

+1CC TO MR.R.J.KARTHICK ADVOCATE IN S.R.NO.76347.

+1CC TO MR.K.SREE KUMARAN NAIR ADVOCATE IN S.R.NO.76109.

MRN

DS SKN SAR-3:19.09.2018: 3P/4C

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

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