

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21 .02.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.RC.No.255 of 2019
and
Crl.M.P.No.2792 of 2019

M.S.Rajapandiyan

...Petitioner

Versus

G.Palani

...Respondent

Prayer:

The Criminal Revision has been filed under Section 397 r/w 401 of Code of Criminal Procedure to allow the above Criminal Revision Petition and to set aside the order dated 10.12.2018 in C.M.P.No.2423 of 2018 in S.T.C.No.55 of 2016 on the file of the learned Judicial Magistrate No-II, Walajapet, Vellore District.

For Petitioner : Mr.R.Gopinath

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 10.12.2018 in C.M.P.No.2423 of 2018, in S.T.C.No.55 of 2016, on the file of the learned Judicial Magistrate No-II, Vellore District, dismissing the petition in C.M.P.No.2423 of 2018 filed under Section 45 of Indian Evidence Act, seeking expert's opinion to ascertain the signature of the accused and the age of the ink. After hearing both sides, the learned Judicial Magistrate dismissed the petition by order dated 10.12.2018. The said order is put in challenge in the present criminal revision case.

2. The learned counsel for the petitioner would submit that the petitioner has denied the signature found in the cheque in reply notice in the year 2016 itself, and the complaint was filed in the year 2016 and the same was pending before the learned Magistrate. After receipt of the notice, the petitioner has not taken any steps to file a petition under Section 45 of the Indian Evidence Act to send the cheque for getting an expert

opinion. Therefore, the contents found in the above said exhibit should be examined by an expert and only on such verification by the expert, truth of the transaction could be ascertained. Therefore, the cheque has to be sent for expert opinion under Section 45 of Indian Evidence Act. Therefore, the order passed by the learned Magistrate warrants interference by this Court.

3. Heard the learned counsel appearing for the petitioner and perused the materials on record.

4. Admittedly, the petitioner has denied the signature found in the cheque. He has not stated any reason as to why he has not filed this application even before the complainant coming to the box. After evidence of the complainant, when the matter was posted for defense witness, only at that time, he has filed this petition. Therefore, it shows that he has filed the application only to protract the case. This Court does not find any justification in the application at the fag end of the trial. Under these circumstances, there is no merit in the revision and there is no ground made out to interfere with the order passed by the learned Magistrate.

5. From the above, it is very clear that the petitioner herein, who is accused, was only attempting to drag on the proceedings under the pretext of filing petition under Section 45 of Indian Evidence Act and therefore, the trial Court has rightly dismissed the petition as it is devoid of merits. This Court does not find any reason for interfering with the order. The present criminal revision is devoid of merits and the same is accordingly dismissed at admission stage itself. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The learned Judicial Magistrate No-II, Walajapet,
Vellore District.

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and
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BS (CO)
CS/05/04/2019