

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.RC.No.38 of 2018
and
CrI.MP.No.237 of 2018

M.P.Raja

...Petitioner

Vs.

S.Chandramohanvel

...Respondent

Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order dated 29.11.2017 made in C.M.P.No.546 of 2017 in S.T.C.No.43 of 2017 on the file of the II Additional District Munsif Judge, Bhavani.

For Petitioner : Mr.M.Guruprasad
For Respondent : Mr.Paramasiva doss
for Mr.K. Sathish

O R D E R

This revision has been filed by the petitioner seeking to set aside the order passed by the learned II Additional District Munsif Judge, Bhavani, in C.M.P.No.546 of 2017 in S.T.C.No.43 of 2017 dismissing the petition filed under Section 45 of the Indian Evidence Act to send Ex.P.1 - Disputed cheque and Ex.P.2 - Collection slip, to compare the entries in both documents by a forensic expert.

2. The brief facts of the case is that the petitioner is the accused in S.T.C.No.43 of 2017 pending before the trial Court for offence under Section 138 of the Negotiable Instruments Act, 1881 (in brevity "the Act"). The complaint had been filed in respect of dishonor of the cheque issued by the petitioner / accused for Rs.5,00,000/-.

3. The petitioner / accused had taken a specific plea that the cheque which was marked as Ex.P.1 was given blank towards security to one Shanmugam, during the course of chit transaction and the said Shanmugam had handed over the cheque to the respondent / complainant to initiate action. Further, it had

been contended that there was no liability and legally enforceable debt. During the course of the cross-examination, a question had been put to the complainant, whether the cheque was given as blank or handed over to him after the details were filled, for which, the respondent / complainant had answered stating that the cheque was handed over to him after entries were made. Thereafter, the next question had been put to him, whether entries in Ex.P.2 (the collection slip) were made by the respondent / complainant for which the respondent / complainant had admitted that the entries in Ex.P.2 were made by him. Since Section 139 of the NI Act casts a reverse burden upon the accused to discharge the presumption regarding consideration, the petitioner / accused in order to prove that the entries in Ex.P.1 and entries in Ex.P.2 with regard to the name and the amounts were filled by one and the same person, had filed the petition seeking to send Ex.P.1 and Ex.P.2 for opinion from the expert.

4. The respondent / complainant had filed a counter denying that the cheque was handed over to one Shanmugam. Further, it had been contended that having admitted the signature in the cheque, the petitioner / accused is not entitled to file a petition seeking to send the cheque for opinion from the Forensic expert. The trial Court finding that as per Section 20 of the NI Act, once a person issues a signed blank cheque, he is liable upon such instrument, to pay the amount and accordingly, dismissed the petition. Against which, the revision has been filed.

5. The learned counsel for the petitioner / accused would submit that in view of Section 139 of the NI Act a reverse burden is cast upon the petitioner / accused to rebut the presumption against him. He would submit that it is the specific case of the petitioner / accused that a blank cheque had been given and that the name in the cheque and the amount in the cheque were filled up by the respondent / complainant himself. He would submit that during the cross-examination, the respondent / complainant had denied, having made entries in Ex.P.1 which is the cheque, whereas he had admitted that the entries in Ex.P.2 (the collection slip) had been made by him. Though it is visible to the bare eyes that the entries had been made by one and the same person namely the respondent / complainant himself, he had denied in respect of Ex.P.1 and admitted in respect of Ex.P.2 and thereby, the petitioner / accused in order to rebut the presumption and to prove the limited fact that the cheque was given blank without any entries being made, had filed a petition to send both the documents for getting a expert opinion, whereas the trial Court without correctly analyzing the issue in question had wrongly held that since the petitioner had admitted the signature in the

cheque, the cheque need not be sent for obtaining the expert opinion. He would re-iterate and submit that the cheque needs to be sent for expert opinion only with regard to the entries made in Ex.P.1 and Ex.P.2.

6. The learned counsel appearing for the respondent / complainant would submit that the petitioner / accused has admitted the signature in the cheque and thereby, there is no need to send the cheque for expert opinion. Having admitted the signature in the cheque the petitioner / accused cannot take a different stand.

7. Per contra, the learned counsel for the petitioner would submit that though the petitioner / accused had admitted the signature in the cheque Ex.P.1, it is his specific plea that the Ex.P.1 was signed and given blank without filling the name, date and amount and that entries in Ex.P.1 were made by P.W.1 himself and since P.W.1 had blown hot and cold by denying having made entries in Ex.P.1 and admitted having made the entries in Ex.P.2, it was absolutely essential to send Ex.P.1 and Ex.P.2 was expert opinion to prove that entries in Ex.P.1 and Ex.P.2 were made by one and the same person.

8. Now what is to be seen is whether Ex.P.1 and Ex.P.2 have to be sent for Expert opinion to find out whether the entries, particularly the name and amount both in numerical and writings are made by one and the same person. It is the specific plea of the petitioner / accused that the cheque was given to one Shanmugam as a blank cheque. If the respondent / complainant had admitted that the cheque was given to him as a signed blank cheque and the entries were made by him, it is a different case. In this case, the respondent / complainant had specifically admitted that the cheque was handed over to him after the entries were made by the petitioner / accused. As rightly pointed out by the counsel for the petitioner, the respondent / complainant can avail the benefit of Section 20 of the NI Act if he had agreed that a signed blank cheque was given. However, strangely in this case, the respondent / complainant had denied making the entries in Ex.P.1, more particularly the name and the amount of Rs.5,00,000/- in writing as well as in numerical, whereas he has admitted the entries in Ex.P.2 with regard to the name and amount in writing and numerical. In this case a specific defence has been raised with regard to handing over of blank signed cheque to one Shanmugam and dispute has been raised with regard to consideration. In the opinion of this Court when the respondent / complainant had denied having made entries in Ex.P.1 and admitted having made entries in Ex.P.2, both of them have to be compared to prove the plea of the petitioner / accused that Ex.P.1 was given a signed blank cheque and that entries in Ex.P.1 and Ex.P.2 are made by one and the same

person.

9. This Court in order to avoid further delay in trial, intended to invoke Section 73 of the Evidence Act to compare the entries in Ex.P.1 and Ex.P.2 by itself and asked for the concurrence of both counsels. Both counsels agreed for the same and this Court had called for the originals of Ex.P.1 and Ex.P.2 from the trial Court. This Court compared the entries made in Ex.P.1 and Ex.P.2 in the presence of both counsel and concludes that the entries viz "S.Chandra Mohan Vel" and the amount of Rs.5,00,000/- in writing and numerical in Ex.P.1 and Ex.P.2 have been made by one and the same person.

10. Accordingly, the revision stands partly allowed with the regard to the above finding of entries in Ex.P.1 and Ex.P.2 alone. However, it is made clear that the above observations made in this order are only for the purpose of deciding this criminal revision case alone and such observations shall not either way prejudice to the rights of either parties and that the trial court shall not be influenced by any of the observations made in this order, but shall proceed with the trial independently and in accordance with law. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

bri
To

The II Additional District Munsif Judge,
Bhavani.

Copy to
The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.M.Guruprasad, Advocate sr 98539.
+1 CC to Mr.K. Sathish, Advocate sr 97733.

Crl.RC.No.38 of 2018

AD(CO)
SP(24/01/2020)