

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.14239 of 2019
in Crl.M.P.No.6905 of 2019

Thulja Traders
Rep.by its Power Agent,
S.R.Guruprasad,
No.5, Sri Kabaleswarar Sannathi Street,
Shanthi Tailor Building,
Mylapore,
Chennai - 600 001.

...Petitioner/2nd Accused

-Vs-

M/s.Venkatesh Trading Company,
Rep. by its Partner,
Danmalchandak,
Old No.17, New Door No.37,
Anderson Street, First Floor,
Chennai - 600 001.

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.7444 of 2019 in C.C.No.935 of 2014, dated 08.04.2019, on the file of the Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai - 1, by allowing the present Criminal Original Petition.

For Petitioner : M/s.K.Suthan
For Respondent : Mr.T.R.Ravi

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below, dismissing the application filed by the petitioner under Section 45 of the Evidence Act, r/w Section 294 of Cr.P.C, to send the cheque for expert opinion in order to ascertain the signature that is found near the date portion by comparing it with the signature found at the bottom of the cheque.

2. The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The petitioner had earlier moved a similar application in CrI.M.P.No.1622 of 2016 and the Court below by an order dated 23.01.2017 granted liberty to the petitioner to move it at the appropriate time and directed the petitioner to complete the cross examination of PW.1. PW.1 was cross examined by the petitioner and certain questions were put regarding the signature that is found in the date portion. After the completion of the cross examination, the petitioner filed the present application to send the cheques for expert opinion and the same has been dismissed by the Court below on the ground that the petitioner is attempting to drag on the proceedings.

3. The learned counsel for the petitioner submitted that the petitioner had filed a similar petition and the Court below had given him liberty to move the petition at the appropriate time. According to the petitioner, the appropriate time was after the cross examination of PW.1, wherein, PW.1 had answered some question regarding the signature found in the cheques. The learned counsel therefore, submitted that the cheques will have to be necessarily sent for expert opinion, since the signature found near the date is not the signature of the petitioner and it has been manipulated by the respondent.

4. The learned counsel for the respondent submitted that the petitioner is dragging on the proceedings by filing one petition after another. The learned counsel further submitted that according to the respondent, the signature that is found near the date and the signature that is found at the bottom of the cheque is the signature of the petitioner. If the petitioner is disputing the signature found near the date portion, in the course of the examining himself as a witness, that will be the more appropriate time for the petitioner to send the cheque for expert opinion. To substantiate the submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court reported in (2009) 1 MLJ 1359 (SC) Damara Venkata Murali Krishna Rao Vs. Gurujupalli Satvatham.

5. The learned counsel further submitted that a time limit shall be fixed for the completion of the proceedings, since it is dragging on for a long time.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The short question that needs to be addressed by the Court is whether the petitioner should be permitted to send the cheques for expert opinion in order to ascertain the signature found near the date in each cheque to be compared with the

signature that is found at the bottom of the cheques. Earlier, when similar attempt was made by the petitioner, the Court below, had dismissed the petition on the ground that it is premature and that the petitioner should move such an application at an appropriate time. The petitioner thought that the appropriate time would be after the cross examination of PW.1, where he has put certain questions on the signature found in the cheque.

8. The learned for the respondent by relying upon the judgment of the Hon'ble Supreme Court referred supra has submitted that the occasion to file such an application will arise only after the examination of the petitioner, since it is his signature that is found in the cheque and the same has to be first disputed at the time of examining himself as a witness and only thereafter the question as to whether the cheque has to be sent for expert opinion can be decided.

9. The petitioner is yet to commence the defence evidence and the case is presently at that stage. The petitioner can very well go into the box and depose before the Court. The respondent will also be entitled to cross examine the petitioner. If after the examination, there is a serious dispute regarding the signature found near the date portion in all the cheques, at that point of time, it is always open to the petitioner to file a similar petition to seek for an expert opinion to ascertain the signature found near the date portion by comparing it with the admitted signature found at the bottom of the cheques. As per the judgment of the Hon'ble Supreme Court referred supra, that is the occasion, when such a right accrues to the petitioner.

10. In view of the above, this Court is not inclined to interfere with the order passed by the Court below at this stage. It will be left open to the petitioner to revive the relief after he is examined as a witness on the side of the defence and the same shall be considered by the Court below in accordance with law.

11. This Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in C.C.No.935 of 2014, within a period of four months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Metropolitan Magistrate,
Fast Track Court-IV,
George Town, Chennai - 1.

+lcc to M/s.K.Suthan, Advocate sr.56857

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nr 20/08/2019



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