

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.Rc.No.526 of 2019
and Crl.M.P.No.7191 of 2019

Uma Maheswari

.. Petitioner

vs.

N.V.Krishnan

.. Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC to call for the records relating to CMP.No.669 of 2019 in C.C.No.66 of 2010 on the file of the Judicial Magistrate No.II Walljapet and set aside the same as far as the petitioners are concerned.

For Petitioner : Mr.C.Gunasekaran

ORDER

For the sake of convenience, the parties are referred to by their name.

2. It is the case of N.V.Krishnan the complainant, that V.Ganesh Kumar and his wife Uma Maheswari/petitioner herein are into the business of stone crushing. The complainant wanted to purchase a stone crushing machine and so he approached the State Bank of India, Walajapet Branch for loan. The loan was sanctioned and a sum of Rs.50,00,000/- was directly paid by the State Bank of India to the account of V.Ganesh Kumar. After receiving the amount, Ganesh Kumar and his wife did not supply the stone crushing machine. The complainant was made to run from pillar to post. Ultimately, Ganesh Kumar and his wife gave an undertaking letter dated 04.06.2009 that they will return the amount on or before 24.06.2009.

3. As the interest was mounting, the complainant demanded return of the principal amount with interest. Both the accused agreed to return Rs.65,00,000/-. Accordingly, Uma Maheswari/petitioner gave a cheque bearing No.680226 for Rs.60,00,000/- and Ganesh Kumar gave a cheque bearing No.680225 for Rs.5,00,000/-. Both the cheques, when presented by the

complainant, were dishonoured and the said fact was intimated to the complainant on 21.01.2010.

4. The complainant issued Statutory Notice and thereafter, filed the prosecution in C.C.No.66/2010 against Ganesh Kumar and his wife Uma Maheswari before the Court of Judicial Magistrate No.II, Walajapet under Section 138 of the Negotiable Instruments Act, 1881. This Court appears to have quashed the prosecution against Ganesh Kumar on the ground that he was not the signatory to the cheque issued by Uma Maheswari. Therefore, the prosecution in C.C.No.66/2010 is only against Uma Maheswari.

5. After the complainant was examined in chief, he was subjected to cross examination by the counsel for Uma Maheswari. In the cross examination, the complainant was shown two cheques, namely cheques bearing Nos.680225 and 680226 and was asked whether the handwriting and ink in those two cheques were different or not, for which the complainant looked into the cheques and stated that according to him, he does not find any difference. Thereafter, the complainant was asked whether he has got any objection in sending the two cheques for expert opinion, for which the complainant told that he has no objection.

6. Therefore, Uma Maheswari/petitioner herein immediately filed Crl.M.P.No.669/2019 in C.C.No.66/2010 before the Judicial Magistrate No.II, Walajapet under Section 45 of the Indian Evidence Act, to send the two cheques bearing Nos.680225 and 680226 for expert opinion in order to find out the difference of ink. The Trial Court, after hearing both sides, has dismissed Crl.M.P.No.669/2019 in C.C.No.66/2010 on 18.05.2019, challenging which Uma Maheswari is before this Court.

7. Heard Mr.C.Gunasekaran, learned counsel for the petitioner who, by placing strong reliance on the following passage in the judgment of this Court in B.Radhamani v. S.Charubala [2018 (4) CTC 164],

"17.... Still, if the Court endeavours to make a comparison, it is reminded that the Court should give valid reasons as to in what respects, it had found the disputed signatures and the admitted signatures agree or disagree as the case may be in all minute details and if such details are not available, on that score alone, it could be held that the conclusion arrived at on naked comparison is weak and unreliable and unacceptable. The Substantial Questions of Law formulated in this Second Appeal are accordingly answered."

and submitted that the Court should not embark upon comparison

and it should relegate the matter to an expert.

8. B.Radhamani case (supra) relates to a judgment in Second Appeal under the Code of Civil Procedure. Certain defences were taken by the plaintiff and the defendant therein in the Trial Court and in that context, the said observations were made by this Court. In the view of this Court, the aforesaid observations are not relevant to decide the issue on hand.

9. The learned counsel for the petitioner placed reliance on the following passage in the judgment of the Orissa High Court in Bhagirati Sahu and Others v. Akapati Bhaskar Patra [AIR 2001 Ori 185 : 2001 SCC Online Ori 50]:

"10..... In view of the decision of the Apex Court in AIR 1979 SC 14 has taken the view that even if the Court has the power to compare the disputed writing with the admitted or proved writing to ascertain whether the disputed writing is that of the person who is stated to have written, as a matter of prudence the Court should not venture such comparison by itself and should take the assistance of expert's opinion in arriving at a finding."

In the facts and circumstances of that case, the Orissa High Court has held that the Court should not venture to compare the handwriting and signature and should send the documents for expert opinion.

10. In this case, just because the complainant has stated that he has no objection in sending the two cheques for expert opinion, the Trial Court need not have to take it as a word of gospel and send for expert opinion.

11. The fact remains that the accused has not denied that the signature in the cheques are not that of her. The accused has not even replied to the statutory notice before the complaint was filed. Therefore, in the opinion of this Court, the accused has not made out a prima facie case for the Court to exercise powers under Section 45 of the Indian Evidence Act to send the two cheques for expert opinion to determine the ink. In the opinion of this Court, the accused has filed the petition only to prolong the case.

12. This Criminal Original Petition is devoid of merits and accordingly, it is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

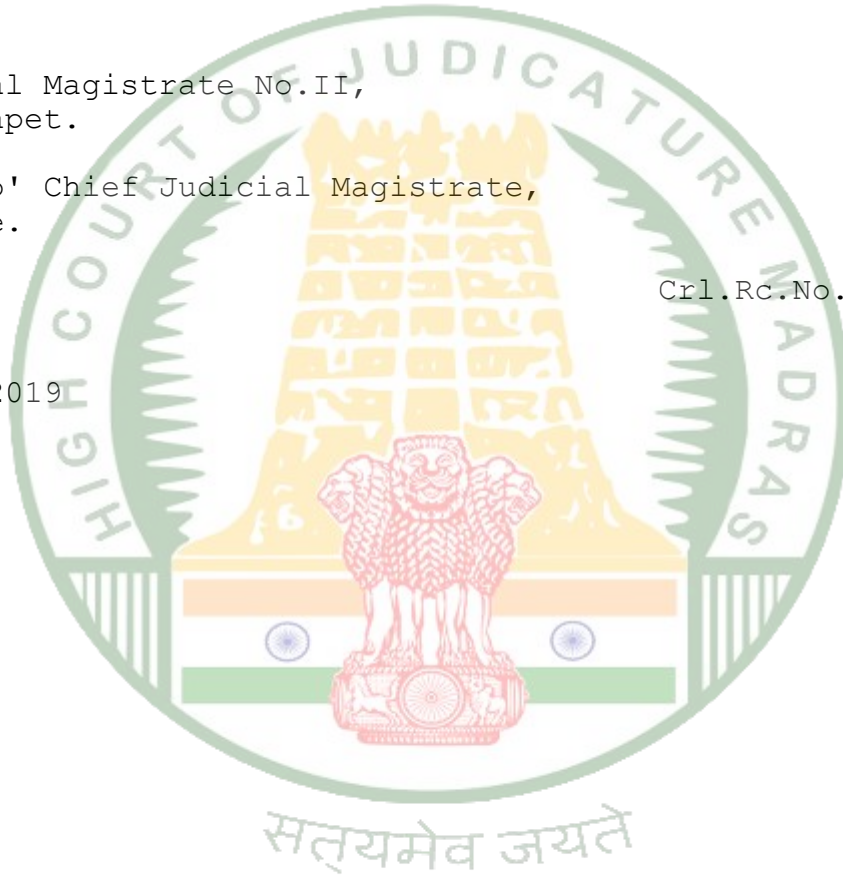
Jvm

To

1. Judicial Magistrate No.II,
Wallajapet.
2. Do Thro' Chief Judicial Magistrate,
Vellore.

Crl.Rc.No.526 of 2019

SS(CO)
CS/29/07/2019



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