

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.530 of 2019
in Crl.M.P.No.7260 of 2019

Selvanayaki,
W/o.Kathiresan,
63A, Sarathambal Nagar,
Karumathampatti,
Coimbatore.

..Petitioner/Petitioner/Accused

Vs.

K.A.Palanisamy,
S/o.Appachi Gounder,
Sri Devi Rice Mandi,
No.15/91F, 5th Street,
Senthil Nagar, Somanur,
Coimbatore.

..Respondent/ Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to call for the records in Crl.M.P.No.1918 of 2018 in C.C.No.846
of 2017 on the file of the Judicial Magistrate Court, Sulur and
set aside the order dated 13.05.2019

For Petitioner : A.Gokulakrishnan
for M/s.G.K.Associates

ORDER

This criminal revision has been preferred seeking to set
aside the order dated 13.05.2019 in Crl.M.P.No.1918 of 2018 in
C.C.No.846 of 2017 on the file of the Judicial Magistrate Court,
Sulur and to call for the records in the said petition.

2. For the sake of convenience, the petitioner and the
respondent will be referred to as the accused and the
complainant, respectively.

3. It is the case of the complainant that he is a small time trader and the accused is also a small time trader having her shop near the shop of the complainant. According to the complainant, the accused borrowed a sum of Rs.3,00,000/- from the complainant as a hand loan in October 2016 and issued a cheque dated 17.10.2016 for the said amount. When the complainant presented the cheque, it was returned as unpaid with an endoresement " Funds Insufficient ". The complainant issued a statutory notice dated 24.10.2016, for which, the accused sent a reply notice dated 07.11.2016, for which, the complainant sent a rejoinder notice dated 15.11.2016. Thereafter, the complainant filed C.C.No.846 of 2017 before the Judicial Magistrate Court, Sulur, Coimbatore District, under Section 138 of the Negotiable Instruments Act, 1881, (for brevity "the NI Act"), against the accused.

4. On behalf of the complainant, he examined himself as PW1 and was subjected to cross-examination. After the evidence of the complainant was completed, the accused was questioned under Section 313 Cr.P.C. on 15.02.2018. When the matter was posted for defence witness, the accused filed CrI.M.P.No.1918 of 2018 in C.C.No.846 of 2017 under Section 45 of the Evidence Act, for sending the cheque to the Handwriting Expert in order to show that the writings in the cheque were not those of the accused. The said petition has been dismissed by the Trial Court on 13.05.2019. Challenging the same, the accused is before this Court.

5. Heard Mr.A.Gokulakrishnan, learned counsel for the petitioner who took this Court to the cross-examination of the complainant. In the cross-examination, it was suggested to the complainant that the cheque was not written by the accused. The complainant denied the suggestion and stated that it was indeed written by the accused.

6. The learned counsel for the accused submitted that the accused should be given an opportunity to establish that the writing on the cheque is not that of his. He further placed strong reliance on the judgment of this Court in CrI.R.C.No.808 of 2017 dated 26.03.2018. The learned counsel for the accused further contended that Section 20 of the NI Act will not apply to the cheque in view of the judgment of this Court in D.Santhosam Vs. V.K.Periyasamy [(2019) 1 MLJ (CrI) 396].

7. This Court gave its anxious consideration to the submissions made by the learned counsel for the accused.

8. On reading the evidence of Palanisamy (PW1), it is clear that the accused has not disputed his signature in the cheque. Even when the accused was examined under Section 313 Cr.P.C. by the Court, he did not take any such plea. Only when the matter was posted for defence witness, the accused filed the petition under Section 45 of the Evidence Act.

9. The Trial Court has relied upon the judgment of this Court in Babu Vs.Vinayagam [2012 (2) Law Weekly (CrI.) 665].

10. Without going into the legal provision on facts, this Court holds that when the accused has admitted his signature in a cheque and even when he was questioned under Section 313 Cr.P.C., he had not taken such plea that the writings are not those of his, the petition under Section 45 of the Evidence Act to send the cheque to an expert to determine the ink and the writings, is only to delay the proceedings. It is always open to the Trial Court to exercise the powers under Section 73 of the Evidence Act, while delivering the final judgment.

In the result, this criminal revision is dismissed as being devoid of merits. Connected, miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate Court,
Sulur,
Coimbatore.

+1cc to A.Gokulakrishnan, Advocate sr.47744

CrI.R.C.No.530 of 2019

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