

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.887 of 2019 and
Crl.M.P.Nos.12874 & 12875/2019

S.Srimathy
Petitioner/Accused

..

vs

V.R.Subramanian
Respondent/Complainant

..

Prayer:- This Criminal Revision Petition has been filed, under section 397 read with 401 of Cr.P.C., to call for the records pertaining to the order dated 25.04.2019, in Crl.M.P.No.1569/2019 in C.C.No.207/2017, passed by the Judicial Magistrate (Fast Track) Court, Alandur, Chennai and set aside the same.

For Petitioner : Mr.G.Saravanakumar

ORDER

- 1.The Criminal Revision has been filed by the Petitioner/Accused, to call for the records pertaining to the order dated 25.04.2019, in Crl.M.P.No.1569/2019 in C.C.No.207/2017, passed by the Judicial Magistrate (Fast Track) Court, Alandur, Chennai and to set aside the same.
- 2.The petitioner is an accused, facing charges for the offence under Section 138 of the Negotiable Instruments Act. The petitioner/Accused had filed a petition under Section 45 of the Indian Evidence Act, stating that during the cross examination to prove the legally enforceable debt, the respondent/complainant had claimed at Ex.P1/Cheque was filled by the petitioner/accused over the amount. It was the contention of the petitioner/accused that she never filled the content of those cheques except the signature as claimed by the respondent/complainant in this case.
- 3.The petitioner alleging that the signature in the said cheques were 10 years old and that it was issued for the reason claimed the respondent/complainant in this case and claiming that the respondent/complainant, without knowledge/consent of the petitioner had filed a petition seeking sending of Ex.P1 cheque for handwriting expert opinion.

- 4.The respondent/complainant had filed a counter, stating that

the case was posted for the defence witness finally and that the petitioner/accused had taken several adjournments for examination of the defence witnesses and at the stage of argument, the petition had been filed seeking expert opinion to protract the trial and to drag the proceedings. Further, it had been stated that the case had been posted on 07.08.2018, 05.09.2018, 17.09.2018, 10.10.2018, 20.11.2018 and 10.12.2018 and the petitioner/accused had not taken any steps and belatedly, the accused had filed a petition under Section 45 of the Indian Evidence Act to prolong the trial.

5. The learned Trial Judge, finding that had admitted her signatures in the cheque and finding no reason to seek expert opinion regarding the filling of the contents of the cheques and finding that the petitioner had not taken any defence at any stage that the cheques were filled 10 years ago and also finding that the petition has been filed only to delay the proceedings had dismissed the petition. Against which the present criminal revision has been filed.
6. The learned counsel for the petitioner would submit that the petitioner has to prove the case that the contents of the cheque were not filled by her and that there is a bounden duty cast on the petitioner to rebut the presumptions against her and in such circumstances, the cheque has to be necessarily sent for obtaining expert opinion. Further, the respondent/complainant had agreed that the cheque may be send for examination.
7. I have gone through the orders passed by the Trial Judge and also carefully analysis the materials on record.
8. The learned Judge had dismissed the petition with following grounds:
 - i. The petitioner had admitted the signature
 - ii. The petitioner at no stage had taken a defence that the cheques are issued by her 10 years ago
 - iii. The petitioner had alleged to have knowledge that the cheques were issued 10 years ago had not raise plea during the initial questioning and also during the questioning under Section 313 of Cr.P.C.,
 - iv. Having admitted the signature in the cheque it it is immaterial as per Section 20 of the Negotiable Instruments Act, 1881, that the cheques may have been filled in by any person other than the drawer
 - vi. Though several opportunities were available to the petitioner at earlier stages, the petition had been filed at the fag end of the trial to delay the proceedings.
9. In 2018 (3) MWN (Cr.) DCC 16 in T.Mohanraj v. A.Britto Joy, this Court has held that there is no facility or mechanism or expert available to find out age of ink thereby, and the prayer is not workable and In 2018 (3) MWN (Cr.) DCC 40 in C.Kannan v. V.Murugan, this Court finding that the Trial Court is empowered under Section 73 of the Evidence Act,

1872 to peruse and compare disputed document with admitted document and finding that the petition had been filed to drag the proceedings had dismissed the petition and In 2019 (1) MWN (Cr.) DCC 164 in Bir Singh v. Mukesh Kumar, the Hon'ble Apex Court has held that:

"37.A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 & 139 makes it amply clear that a person, who signs a cheque and makes it over to the Payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer of the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Sections 138 would be attracted."

10. In view of the above judgments, finding that the petitioner having admitted the signature in the cheques and that no evidence had been raised up at the earlier point of time and that the plea had been raised at a belated stage to protract the trial, the Trial Court had rightly dismissed the petition.

11. I do not find any infirmity in the order passed by the learned Trial Judge.

12. Accordingly, this Criminal Revision Petition is dismissed. Any observations made in this revision will not affect or unless in the trial. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssi

To:

1. The Judicial Magistrate (Fast Track) Court,
Alandur, Chennai.

CrI.R.C.No.887 of 2019

and

CrI.M.P.Nos.12874 & 12875/2019

A.SK(28/11/2019)

WEB COPY