

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.579 of 2019
and
CrI.M.P.No.7846 of 2019

Dhanasekaran ... Petitioner/Accused

Vs.

J.Bagyalakshmi ... Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 30.05.2019 passed in C.M.P.No.2489 of 2019 in S.T.C.No.401 of 2018 on the file of the Fast Track Court-II (Magistrate Level), Poonamallee and to call for the records in the same petition.

For Petitioner : Mr.C.Anbuchezeheian

ORDER

This petition has been preferred seeking to set aside the order dated 30.05.2019 passed in C.M.P.No.2489 of 2019 in S.T.C.No.401 of 2018 on the file of the Fast Track Court-II (Magistrate Level), Poonamallee 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 the accused has totally borrowed a sum of Rs.7,50,000/- and also executed a mortgage deed and promissory notes. Towards discharge of the liability, the accused issued a cheque for Rs.15,00,000/- lakhs. The complainant presented the cheque and the same was returned with an endorsement "Signature Differs". The complainant issued a statutory notice dated 25.05.2018 to the accused, for which, there was no reply. Thereafter, the complainant initiated the prosecution in S.T.C.No.401 of 2018 and the same is pending before the Fast Track Court-II (Magistrate Level), Poonamallee, under Section 138 of the Negotiable Instruments Act, 1881 (for

brevity "the NI Act"), against the accused.

4. The complainant examined herself as PW1 and she was cross-examined. In the cross-examination, the accused has questioned the complainant as to who had filled the cheque, for which, the complainant has stated that she did not know who had filled the cheque, but, the accused had sent the cheque to her duly signed and filled. Under such circumstances, the accused filed Crl.M.P.No.2489 of 2019 in S.T.C.No.401 of 2018 under Section 45 of the Evidence Act, to send the cheque to the handwriting expert in order to find out as to who had filled the cheque.

5. After hearing either side, the Trial Court, by order dated 30.05.2019, has dismissed Crl.M.P.No.2489 of 2019, challenging which, the accused is before this Court.

6. Heard Mr.C.Anbuechezheian, learned counsel for the accused, who submitted that unless the cheque is sent to the handwriting expert, it will not be known as to who had filled up the cheque. He further submitted that the accused has to discharge the burden under Section 139 of the NI Act and therefore, it is necessary to send the cheque to the handwriting expert for opinion.

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

8. The fact remains that the accused did not reply to the statutory notice and the cheque had been returned on the ground "Signature Differs". That apart, the complainant has stated that the accused had sent the filled cheque to her, which she deposited in the bank. Section 20 of the NI Act states that a blank cheque can be filled by the payee. In the cross-examination, the accused has not denied his signature in the cheque. Under such circumstances, in the opinion of this Court, the Trial Court has not committed any illegality in dismissing the above petition in Crl.M.P.No.2489 of 2019.

In the result, this criminal revision petition is dismissed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

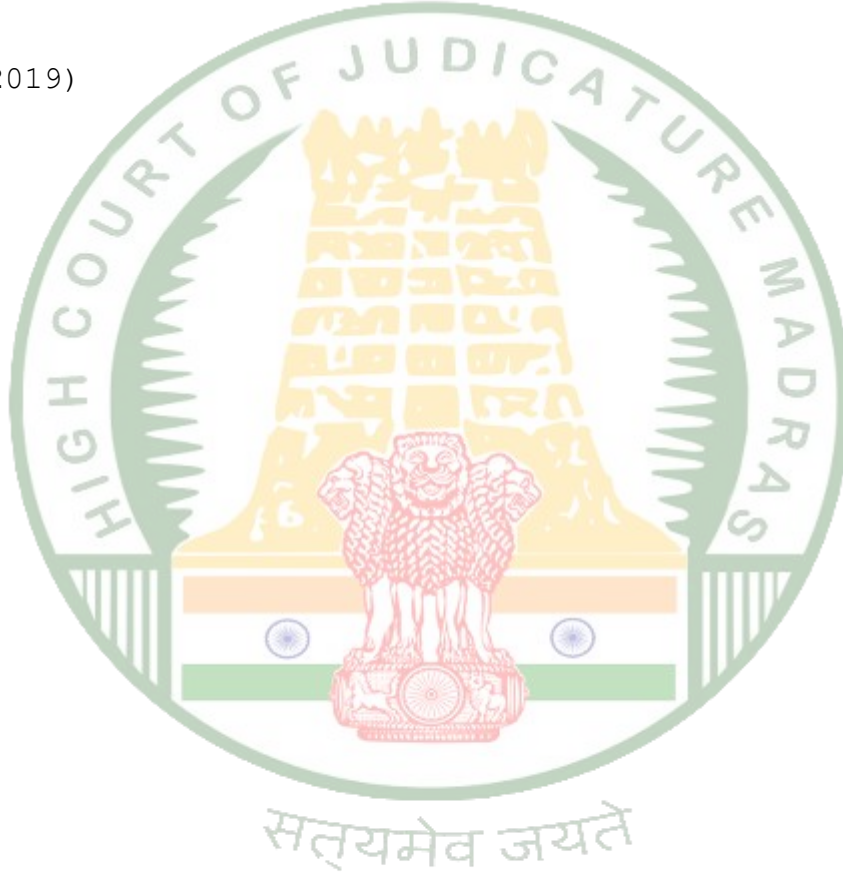
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To

- 1.The Fast Track Court-II,
(Magistrate Level),
Poonamallee.
- 2.The Chief Judicial Magistrate,
Kancheepuram.

Cr1.R.C.No.579 of 2019

RSI (CO)
GN(19/07/2019)



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