

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.502 of 2014
and
M.P. No.1 of 2014

T.K.T.G.Srinivasa ... Revision Petitioner/ Complainant

Vs.

M.Nirmala ... Respondent/Accused

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., praying to call for the records relating to C.C.No.106 of 2012 on the file of the Judicial Magistrate (F.T.C.), Vellore and set aside the order dated 11.04.2014, passed in Crl.M.P.No.643 of 2014 in C.C.No.106 of 2012.

For Petitioner : Mr.G.Vinodh Kumar

For Respondent : Mr.P.Chandrasekar

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 11.04.2014, passed by the Judicial Magistrate, Fast Track Court, Vellore, in Crl.M.P.No.643 of 2014 in C.C.No.106 of 2012.

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

3.It is the case of the complainant that the accused had borrowed Rs.16,00,000/- (Rupees sixteen lakhs only) on 09.05.2011 and had executed a promissory note for the said amount. Towards the said liability, the accused issued a cheque dated 16.02.2012 for Rs.18,00,000/- (Rupees eighteen lakhs only), which when presented by the complainant was dishonoured on the ground of insufficiency of funds. After issuing a statutory notice dated 30.04.2012, the complainant initiated a prosecution in C.C.No.106 of 2012 before the Judicial Magistrate, Fast Track Court, Vellore, under Section 138 of the

Negotiable Instruments Act, against the accused. After the closure of evidence on the side of the complainant, the accused was questioned under Section 313 Cr.P.C. Thereafter, the accused filed a petition in CrI.M.P.No.643 of 2014 in C.C.No.106 of 2012 under Section 45 of the Indian Evidence Act r/w. Section 243 Cr.P.C. for sending the impugned cheque and promissory note to the Forensic Sciences Laboratory to determine the age of the writing and signature on them by analysing the ink. This petition has been allowed by the trial Court on 11.04.2014, challenging which, the complainant is before this Court.

4.Heard Mr.G.Vinodh Kumar, learned counsel for the complainant and Mr.P.Chandrasekar, learned counsel for the accused.

5.Mr.P.Chandrasekar submitted that the complainant has misused an old cheque, that was given by the accused as security and has filed the prosecution. Therefore, there is no infirmity in the order passed by the trial Court, warranting interference by this Court.

6.However, Mr.G.Vinodh Kumar placed strong reliance on an unreported judgment of this Court in K.Vairavan v. Selvaraj [CrI.R.C.(MD) No.265 of 2012 dated 18.07.2012], wherein, in Para No.25, this Court has held as follows :

"25.In this regard, we may come back to the judgement of Justice S.Nagamuthu in R.Jagadeesan's case cited supra, wherein it is not the view taken by the learned Judge that there is no scientific method available for ascertaining the age of the ink used for writing the disputed document. The learned Judge has only held that there is no expert available, who can scientifically examine the same. Even now, the learned Judge had ascertained from the Forensic Science Department, Government of Tamil Nadu, Chennai, that there is no expert , who can offer such opinion. Now, the Assistant Director, Central Forensic Laboratory, Hyderabad has also stated that there is no such expert available anywhere in India. Thus, it is crystal clear that, as of now, there is no expert available in India. In A.Sivagnana Pandian's case cited supra, Justice S.Palanivelu has stated that in Forensic Science it is possible to ascertain the age of the ink. Regarding such conclusion arrived at by the learned Judge, I have no different opinion. Science has developed so much and that it is possible. As per the leading books referred to by the learned Judge, there is a scientific method available. But, knowing a method alone would not serve the purpose to implement the method. Equipment's are necessary and person with the expertise knowledge is also necessary. If only

there is a person who has special skill in the field who is armed with sufficient equipment's, then only he can use the known scientific method to offer his opinion. But, in respect of age of the ink though there are scientific method available in India, there is neither such scientific expert available nor equipment available. It is because of these reasons, I have to necessarily hold that for getting an opinion regarding the age of the ink, the disputed document cannot be sent anywhere as of now. I would make it clear that in future, if any expert emerges and equipment's are also made available, then, after identifying him, the court may forward the disputed documents to him for opinion. Until such time, the document cannot be sent anywhere for the purpose of getting opinion regarding the age of the ink used for writing the disputed document."

7.This Court is in agreement with what is extracted above. Consequently, the present revision case deserves to be allowed. In the result, this Criminal Revision Case is allowed and the order dated 11.04.2014, passed by the trial Court in CrI.M.P.No.643 of 2014 in C.C.No.106 of 2012 is set aside. As a sequel, connected Miscellaneous Petition is closed.

The complainant and the accused are directed to appear before the trial Court and proceed with the trial.

mkn

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

Copy to :

The Judicial Magistrate,
Fast Track Court,
Vellore.

+1cc to Mr.G.Vinodh Kumar, Advocate, SR.No.77567

CrI. R.C. No.502 of 2014
and M.P. No.1 of 2014

Kak(10/10/2019)