



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.7437 of 2017
and
Crl.M.P.No.5374 of 2017

Ayyanar

.. Petitioner

.Vs.

P.Tamilselvi

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 15.02.2017 CMP No.3394 of 2016 in STC No.102 of 2016, on the file of Judicial Magistrate Court No.VI, Salem.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mrr.T.Karunakaran

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 45 of the Evidence Act, to send the cheque for expert opinion and to determine the handwriting found in the cheque.

2. The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The complaint was taken on file in the year 2016. During the course of the proceedings, the petitioner filed a petition to send the cheque for expert opinion on the ground that the signed blank cheque in fact was given as a security and the body of the cheque has been filled by the respondent and the cheque has been misused. Therefore, in order to find out the handwriting found in the body of the cheque, the petitioner wanted the cheque to be sent for expert opinion.

3. The Court below while dealing with the petition has held that the petitioner has accepted the signature found in the cheque and he has disputing the handwriting that is found in the body of the cheque and therefore even if it is found that the handwriting found in the cheque is not that of the petitioner, the same cannot be taken as a ground since even an inchoate



instrument can be filled up by the respondent and the petitioner can be prosecuted under Section 138 of the Negotiable Instruments Act. On this ground, the Court below has proceeded to dismiss the petition.

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4. The learned counsel for the petitioner submitted that the cheque issued for the purpose of security and not in discharge of any loan. The petitioner wants to substantiate the fact that the cheque has been filled up by the respondent and misused and put against the petitioner. Therefore, if an expert opinion is sought for, it will substantially help the petitioner to discharge the burden cast on him under Section 139 of the Negotiable Instruments Act. The learned counsel for the petitioner has relied upon the judgment of the Bombay High Court in Balasaheb Barku Kolhe .Vs. Jagadish Tryambakrao Mandlik & Another reported in CDJ 2015 BHC 1075, to substantiate his arguments.

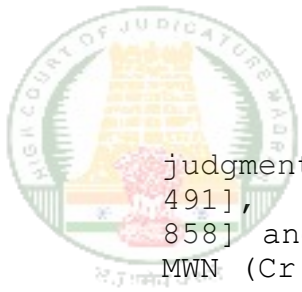
5. The learned counsel for the respondent submitted that the petitioner has categorically admitted the signature found in the cheque in his reply notice which has been marked as Ex.P-5. Therefore, the handwriting found in the body of the cheque becomes immaterial since the holder of the cheque is entitled to fill the body of the cheque under the instructions of the drawer of the cheque. The learned counsel therefore submitted that the Court below has correctly appreciated the position of law on this issue and has dismissed the petition filed by the petitioner and there are absolutely no grounds to interfere with the same.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The only issue that must be gone into by this Court is as to whether any purpose will be served by sending the cheque for expert opinion in order to find out the handwriting found in the body of the cheque.

8. It is the admitted case of the petitioner that the signature found in the cheque is his signature and the cheque given as a security has been misused by the respondent.

9. Section 20 of the Negotiable Instruments Act 1881 deals with inchoate stamped instruments. Such instruments can be filled up by the holder of the instrument and can be put to use, where the signature of the drawer is not in dispute. The applicability of Section 20 of the Negotiable Instruments Act, in proceedings under Section 138 of the Negotiable Instruments Act is now well settled. Useful reference can be made to the



judgment in S.Gopal .Vs. D.Balachandran reported in [2008 1 CTC 491], Mangayarkarasi .Vs. Natarajan reported in [2012 2 MLJ 858] and Kalaiselvi .Vs. A.Sivasubramanian reported in [2015 3 MWN (Cr.)DCC 69 (Mad)].

10. Even according to the petitioner, for a naked eye, it is clearly seen that the body of the cheque has a different handwriting than the one found in the signature portion of the cheque. Therefore, according to the petitioner the instrument has been misused by the respondent and the criminal proceedings have been initiated. Even assuming that the cheque is going to be sent for an expert opinion and if it is found that the handwriting found in the cheque is not the handwriting of the petitioner, even then Section 20 of the Negotiable Instruments Act, will come into play and it will be for the petitioner to establish under what circumstances the cheque was given to the respondent. In other words, the onus is upon the petitioner to prove that he did not receive any loan or did not incur any liability in favour of the respondent and that the cheque was given only as a security for a different transaction. Therefore, the handwriting found in the body of the cheque may not really have a bearing, and therefore there is no requirement to send the cheque for getting expert opinion.

11. The Court below while considering the petition has relied upon the judgment of this Court in A.Dhinakar .Vs. I.Kezhson reported in [2012 4 MLJ (Cr.)472], and has held that a person in possession of an incomplete instrument in material particulars, will have authority to fill it up and put it to use in view of Section 20 of the Negotiable Instruments Act. This finding of the Court below in the considered opinion of this Court is perfectly valid and legal.

12. The judgment relied upon by the learned counsel for the petitioner will not apply to the facts of the present case.

13. In the result, the order passed by the Court below is sustained and this Criminal Original Petition is dismissed and there shall be a direction to the Court below to complete the proceedings in STC No.102 of 2016, within a period of three months from the date of receipt of copy of the order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KP



To

Judicial Magistrate Court No.VI,
Salem.

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Cr1.OP No.7437 of 2017

PM(CO)
GN(14/08/2019)