

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.23382 of 2019

and

Crl.M.P.Nos.12281 and 12282 of 2019

S.Vinoth Kumar

... Petitioner

-vs-

A.Anitha

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set-aside the order dated 08.01.2019 passed in CRP.No.21 of 2018 on the file of I Additional District Judge, Salem confirming the order dated 09.01.2018 passed in CMP.No.192 of 2018 in S.T.C.No.1 of 2016 on the file of Judicial Magistrate No.VI, Salem and allow the above Criminal original petition.

For Petitioner

: M/s.N.Premalatha

ORDER

This petition has been filed against the order passed by the Court below dismissing the application filed under Section 45 of the Evidence Act to send the cheque for a handwriting expert opinion with regard to the difference in the handwriting found in the body of the cheque.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of Negotiable Instruments Act. The defence that has been taken by the petitioner is that he had issued the cheque signed by him to the father-in-law of the respondent and the said cheque has been misused by the respondent by filling up the date, name and amount. A question was also put the PW1 at the time of cross examination to the effect that the handwriting found in the body of the cheque completely differs and PW1 has also admitted the said fact. Therefore, the petitioner wants to send this cheque to handwriting expert to get his opinion regarding the difference in the handwriting found in the body of the cheque.

3.It is seen from records that the complaint was taken cognizance in the year 2016 and PW1 was examined on 07.04.2016. She was also cross examined by the petitioner, after she was recalled by virtue of an application filed by the petitioner under Section 311 of Cr.P.C. The case was thereafter posted for defence evidence on 15.11.2016. Since no evidence was let in, the case was posted for arguments on 30.11.2016. Thereafter the petitioner has filed Section 311 applications twice. The first application to recall PW1 was dismissed. The second application to call the Branch Manager of the Bank was dismissed and it was reversed by the appellate Court. The third application is the present application filed under Section 45 of the Evidence Act.

4.The Court below has dismissed the application on the ground that the signature in the cheque has been admitted and what is disputed is only in the handwriting that is found in the body of the cheque. The Court below has held that the petitioner does not even state with which handwriting, the handwriting found in the body of the cheque should be compared, for the purpose of giving an opinion. The Court below has come to a conclusion that the petitioner is filing one application after another only with a view to drag on the proceedings.

5.The learned counsel for the petitioner submitted that PW1 has contradicted herself with regard to handwriting found in the body of the cheque at the time of her cross examination. Therefore, the petitioner has to necessarily establish the difference in handwriting found in the body of the cheque and for that purpose an expert opinion is required.

6.This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

7.This Court does not find any illegality or infirmity in the order passed by the Court below. The petitioner had several opportunities to take steps to send the cheque for an expert opinion right from the year 2016 onwards. However, the petitioner has chosen to file this application when the case was at the stage of arguments and more particularly when the petitioner had filed three earlier petitions under Section 311 of Cr.P.C. As rightly held by the Court below, the intention of the petitioner is only to drag on the proceedings. The handwriting that is found in the body of the cheque is disputed. The petitioner does not even state with which admitted handwriting, the handwriting that is found in the body of the cheque should be compared. The march of law has now progressed to such an extent that even inchoate instrument is valid when it comes to proceedings under Section 138 of Negotiable Instruments Act. Therefore, even if

there is a different handwriting found in the body of the cheque, it is for the petitioner to establish as to how the cheque went into the hands of the respondent and for what purpose this cheque was given and to whom. These are factors which requires to be explained by the petitioner to rebut the presumption under Section 139 of Negotiable Instruments Act.

8.In the considered view of this Court, there are absolutely no grounds to interfere with the order passed by the Court below.

9.In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.1 of 2016 within a period of two months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The I Additional District Judge, Salem.

2.The Judicial Magistrate No.VI, Salem.

+lcc to Mr.R.Nalliyappan, Advocate Sr.74538

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srg 25/09/2019