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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.1243 of 2017

and

Crl.M.P.No.11952 of 2017

Kalaivani
also at Indira Bra Company
No.3 Agathiar lane,
Mission Street
Tirupur

... Petitioner/Respondent

Vs.

S.Vijayanand

... Respondent/Respondent

PRAYER: The Criminal Revision Petition has been filed, under Sections 397 read with 401 of Cr.P.C, to set aside the order passed in Crl.M.P.No.4028 of 2017 in S.T.C.No.442 of 2015, dated 16.08.2017, on the file of the learned Judicial Magistrate No.I, Gobichettipalayam.

For Petitioner : Mr.K.S.Karthik Raja
For Respondent : Mr.Esan
for M/s.Va Vu Si Vazhakagam

J U D G M E N T

This Criminal Revision Case has been filed seeking to set aside the order passed by the learned Judicial Magistrate No.I, Gobichettipalayam in Crl.M.P.No.4028 of 2017 in S.T.C.No.442 of 2015, dated 16.08.2017, dismissing the petition, filed under Section 45 of the Indian Evidence Act, to send the pro-note dated 20.10.2013 and the alleged cheque dated 26.11.2014 bearing No.000031 of the Gobichettipalayam Co-operative Urban Bank to compare with the signatures and the finger print in both documents with that of the petitioner.

2 The petitioner is the accused in S.T.C.No.442 of 2015, pending trial for the offences under Sections 138 of the Negotiable Instruments Act. During the course of trial, the respondent/complainant had marked the pro-note, containing the left thumb impression and the signature of the petitioner/accused as Ex.P1 and the Cheque dated 26.11.2014, as Ex.P2. The petitioner/accused contending that the cheque and the pro-note have been taken from her without her signature and thumb impression and that the left thumb impression and the



3 The respondent had filed a counter, contending that the petitioner had filed the petition only to protract the trial and that the petition had been filed after 2 1/2 years, after commencement of trial. The Trial Court finding that no specific reply had been given by the petitioner/accused at the time of questioning under Section 313 Cr.P.C that the signatures and the thumb impression found in the above documents were not her's, held that the petition had been filed only to delay the proceedings and had dismissed the same. As against the same, the present revision has been filed.

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5 Per contra, the learned counsel appearing for the respondent/complainant would submit that though the denial has been made in the notice, nowhere during the initial questioning or at the stage of questioning under Section 313 Cr.P.C, the petitioner had raised specific plea stating that the signature and the thumb impression was not of her's and thereby, the Trial Court had rightly dismissed the petition contending the petition had been filed only to delay the progress of trial.

6 Heard both sides and perused the materials placed on record.

7 In this case, the petitioner/accused has raised a plea that the signatures found in the cheque and the pro-note and the thumb impression found in the pronote are not her's. This plea/defence taken by the petitioner/accused goes to the root of the case. Further, it is her defence that the cheque and the pro-note had been stolen by her son-in-law and handed over to the respondent/complainant for filing a case against her. Adducing evidence in support of the defence is a valuable right. There is a statutory presumption against the petitioner/accused under Section 139 of the Negotiable Instruments Act and if it is proved that the signature and the thumb impression are not of the petitioner/accused, no offence can be established against the petitioner/accused. The petition to send the cheque and the pro-note for expert opinion has been filed after questioning under Section 313 of Cr.P.C., when the petitioner has entered upon his defence.

8 It is apposite to refer to the judgment reported in 2007 (2) SCC 258 - [Kalyani Baskar Vs. M.S.Sampoornam], wherein, in paragraph No.12, the Hon'ble Supreme Court has held as follows:

"Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut



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the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 CrPC without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) CrPC refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque in question, for the opinion of the handwriting expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable."

9 In this case, as stated above, the petitioner/accused is bound to rebut the presumption and an opportunity has to be provided to prove that the signature and the thumb impression found at Ex.P1 and Ex.P2 are not her's.



10 In the result, the Criminal Revision Case stands allowed and the order passed in CrI.M.P.No.4028 of 2017 in S.T.C.No.442 of 2015, dated 16.08.2017, on the file of the learned Judicial Magistrate No.I, Gobichettipalayam is set aside and the learned Trial Judge is directed to appoint a Commissioner, who will obtain the specimen thumb impression of the petitioner/accused in the presence of the Trial Judge and further, call for the Account Opening Form from the Gobichettipalayam Co-operative Urban Bank relating to the account of the petitioner for comparing the signatures available with the bank and the signature found in the cheque and thereafter, obtain opinion from the handwriting and finger print expert within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

dua

To

1.The Judicial Magistrate No.I,
Gobichettipalayam.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.K.S.Karthick Raja Advocate sr95925
+1 cc to M/s.Easan Advocate sr95912

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