



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.10.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.1126/2019 and Crl.MP.No.15154/2019

K.Shanmugam

...Petitioner/Petitioner/Accused

Vs

B.Sathishkumar

..Respondent/Respondent/Complainant

Prayer:- This Criminal Revision has been filed under Section 397 r/w 401 (1) of Cr.P.C., to set aside the order dated 24.07.2019 made in Crl.MP.No.2388/2019 in C.C.No.139/2014 on the file of the Judicial Magistrate Court, Vaniyambadi, Vellore District.

For Petitioner : Mr.N.Sakthivel

ORDER

- 1.The revision has been filed against the order passed by the Judicial Magistrate, Vaniyambadi, Vellore District, dated 24.07.2019 in Crl.MP.No.2388/2019 in C.C.No.139/2014, dismissing the petition filed under Section 45 of Indian Evidence Act, to refer the cheque to the expert, for getting opinion on it.
- 2.The petitioner is the accused, facing trial in C.C.No.139/2014 for the offence under Section 138 of Negotiable Instruments Act. The petition Crl.MP.No.2388/2019 had been filed under Section 45 of the Indian Evidence Act, seeking to send the Ex.P1 Cheque bearing No.611566 dated 25.08.2014 for expert opinion. It had been contended that the signature in the cheque was not that of his and that the ink in the entries in the cheque and the ink in the signature were with different pens and contending that the signature was forged, the petition had been filed to send the cheque for the expert opinion.
- 3.The respondent had filed a counter wherein, it had been stated that the respondent had sent a legal notice on 28.08.2015 and that the notice had been received by the petitioner/accused on 30.08.2015, which have been marked as Ex.P4 and Ex.P6. It had been contended that the petitioner /accused had not sent any



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reply to the notice and that if it is so, a reply would have been sent and that the petitioner/accused had not denied the liability anywhere in the affidavit filed by him. It was also contended that if the Bank had doubted the signatures in the cheque, the cheque would have been returned for reason that 'signature not matched', whereas the cheque had been returned stating reason 'funds insufficient'. Further nothing had been stated or elicited by the petitioner, under what circumstances the cheques went into the hands of the respondent/ complainant and that no sample or admitted of signatures had been given for comparison of the cheque.

4. The Trial Court finding that no reply had been sent by the petitioner/accused and that the cheque had not been returned for reason the signatures varies and further finding that no facility, mechanism or expertise is available to find out the age of the ink and that the petitioner has not raised any dispute regarding the signature at the initial stage, had dismissed the application, against which, the present criminal revision petition has been filed.
5. The learned counsel for the petitioner would submit that a burden is cast upon the petitioner/accused to rebut the presumption. Admittedly the inks found in the signature and the entries in the cheque were made by different inks and thereby the cheque had to be sent for expert opinion to prove that the petitioner has not signed. Thereby he would seek to set-aside the order passed by the trial Court.
6. This Court heard the submissions made by the learned counsel and perused the order.
7. In this case, the complaint has been filed on 25.08.2014. Before filing of the complaint, a notice had been issued to the petitioner/accused and it had been also received by the petitioner/accused on 30.08.2015 and the said notice has been marked as Ex.P4 and the acknowledgement has been marked as Ex.P6. No reply had been sent to the legal notice by the petitioner/accused contending that his signature was forged. Further, at the time of initial questioning, the petitioner/accused had not stated that the signature in the cheque was forged, but only at a belated stage after 4 years the petition had been filed under Section 45 of the Indian Evidence Act seeking to send the cheque for expert opinion to find out the age of the ink.
8. In the judgement reported in 2018 (3) MWN (Cr.) DCC 16 (T.Mohanraj V.A.Britto Joy), this Court has held that there is no facility or mechanism or expertise available to find out the age of the ink and thereby held that the prayer to send the



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cheque for finding out the age of the ink is not workable . Further, the cheque had been returned by the Bank stating reason that 'funds insufficient'. The trial Court had rightly found that if the signature is not that of the petitioner, he would have either sent a reply to that effect or that he would have informed to the Court at the time of initial questioning and finding that the petitioner has not done so, the trial Court had come to a conclusion that the petition had been filed only to protract the proceedings.

9.I have gone through the orders passed by the learned Trial Judge, I do not find any infirmity in the order dated 24.07.2019 made in CrI.MP.No.2388/2019 in C.C.No.139/2014, passed by the Judicial Magistrate Court, Vaniyambadi, Vellore District.

10.In view of the same, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed. However, since the case in CC.No.139/2014, is of the year 2014 and the matter has been pending for the past five years, the learned trial Judge is directed to complete the trial as expeditiously as possible.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate Court,
Vaniyambadi, Vellore District.

+1 CC to Mr.N.Sakthivel, Advocate sr 88649.

CrI.RC.No.1126/2019 and
CrI.MP.No.15154/2019

BS(CO)
SP(26/12/2019)