

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

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

Crl.RC.No.1093 of 2019
and
Crl.M.P.Nos.14762 & 14763 of 2019

Uthirapathy ...Petitioner/Accused

Vs.

Balasubramanian ... Respondent/Complainant

PRAYER: The Criminal Revision Petition has been filed, under Sections 397 & 401 of Cr.P.C, to call for the records in Crl.M.P.No.2533 of 2019 in S.T.C.No.1644 of 2015 on the file of the learned Judicial Magistrate No.I, Jeyankondam .

For Petitioner : Mr.V.S. Senthil Kumar

For Respondent : Mr.T.Gandhi

J U D G M E N T

This petition has been filed against the order passed by the learned Judicial Magistrate No.1, Jeyankondam in Crl.M.P.No.2533 of 2019 in STC.No.1644 of 2015, dated 27.09.2019, dismissing the petition filed under Sections 45 & 73 of Cr.PC., seeking for sending the cheque for expert opinion.

2 The petitioner is the accused in STC.No.1644 of 2015, pending trial for the offences under section 138 of the Negotiable Instruments Act, the petitioner had filed Crl.M.P.No.2533 of 2019 under Sections 43 & 73 of Cr.PC. In the petition, it has been sated that the complainant and the Manager of the Indian Bank were examined as witnesses. It had been further averred that the revision petitioner/accused does not know the report/complaint and that there was no financial transaction between them. Further, it had been contended that the complainant had deposed in his cross examination that, the cheque bearing No.929725 had been filled up by the revision petitioner/accused himself wherever the revision petitioner/accused does not know to read and write and he can only sign and that the entries in the cheque were not made by

him and thereby, contended that the cheque had to be sent to the expert to compare the signature and to find out the age of the ink.

3 The respondent/complainant had filed a counter denying the allegations. In the counter, it had been stated that the petition had been filed to protract the proceedings and that the complaint had been filed during the year 2015 and that the examination in chief had been completed in the year 2016 and after two years of examining the witnesses, the petition had been filed by the petitioner only to delay and protract the trial. Further it had also been contended that earlier the revision petitioner had filed petition for quashing in CrI.O.P.No.27537 of 2016 and this Court by order dated 23.07.2019, had dismissed the same, with a direction to complete the trial within a period of three months from the date of receipt of a copy of the said order.

4.The Trial Court after hearing both sides by order dated 27.09.2019, had dismissed the petition in C.M.P.No.3533 of 2019 and the present revision has been filed against the order.

5.The learned counsel for the petitioner submitted that the complainant had contended that the entries in the cheque were filled up by the petitioner /accused, whereas it does not show that the petitioner had only signed the cheque and other entries in the cheque were made by the complainant himself and thereby the petitioner had filed the petition to sent the cheque for expert opinion to compare the entries in the cheque with the hand writing of the petitioner and also to find out the age of the ink. Whereas the trial court on wrong premise that since the petitioner had not disputed the signature in the cheque had dismissed the petition. In support of his contention he placed reliance on the judgment of this Court in CrI.R.C.No.166 of2017 dated24.09.2018 wherein this Court had passed the order directing the cheque to be sent for expert evidence.

6. Per contra, the learned counsel for the respondent/complainant would submit that in the case referred to by the petitioner, the complainant had himself agreed for sending the cheque for expert opinion whereas the victims are concerned, complainant had objected for sending the cheque for expert opinion. In this case the petitioner /accused has admitted that having signed the cheque and the petitioner having accepted the signature in the cheque cannot now dispute that the cheques were filled up by some one else. As per Section 20 of the Negotiable Instrument Act the petitioner having signed the cheque is liable upon such instrument in the capacity in which he has signed the same. Further no plea had been taken by the petitioner right from the beginning that he has given a blank

cheque. Further there is no mechanism or expertise to find out the the age of the ink. He further submitted that the petitioner had earlier approached this Court by filing quash petition and this Court had dismissed the petition directing the trial court to complete the trial within the specified period. Only into to protract the proceedings, the petition has been filed at the stage of questioning under Section 313(i) of Cr.P.C. In support of his contention he relied upon the judgment of this Court in 2018(3)MWN(cr.) DCC16 (Madras High Court)(Madurai Bench) in the case of T.Mohanraj-vs- A.Britto Joy, 2018(3)MWN(Cr.)DCC40, wherein it is held as follows:

" Evidence Act, 1872, Section 45- Negotiable Instruments Act 1881, Section 138 and 139- Petition seeking Expert Opinion as to age of ink used in signing cheque- Dismissal of - Legality- Age of Ink- Ascertainment of- No facility or mechanism or expert available to find out the age of the ink- Decisions in Nallathambi and Samsudeen relied upon- Prayer unworkable- Case of complainant that cheque signed and issued and issued in year 1992- Defence taken by Accused/Petitioner that cheque filled up and misused in year 2011- In absence of any facility to ascertain age of ink, petitioner can rebut presumption by proving his defense in any other method in accordance with law- Petitioner can also examine Bank Officials to prove said fact.

He also relied on the judgement of this Court in the case of (Madras High Court)(Madurai Bench) in the case of C.Kannan -vs- V.Murugan, where in it is held as follows:

" Evidence Act- 1872, Section 45 &73- Negotiable Instruments Act, 1881- Section 138- Petition seeking Expert Opinion - Dismissal Legality - Accused seeking to send cheque to hand writing expert to compare signature with other writings found in cheque and to find out whether same written by accused- No objection raised regarding signature in particular - Court under Section 73 empowered to peruse and compare dispute document with admitted document-PW1 already recalled for further cross examination three times at instance of accused- petitioner trying to drag on proceedings- Impugned order of dismissal upheld- Revision petition dismissed".

He also relied on the Judgment of the Honourable Apex Court in the case of Bir Singh -vs- Mukesh Kumar in 2019(1)MWN(Cr.) DCC164 (SC). The relevant para is extracted herein under:

" Negotiable Instruments Act, 1881, Sections 20,87 and 139 Blank/unfilled signed cheques- Filling up of by any person other than drawer does not invalidate cheque- Subsequent filling up of unfilled signed cheques not an alteration.

Para 37) A meaning reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20.87 and 139 makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheques may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of section 138 would be attracted".

He would submit that there is no infirmity or error in the order of the trial court.

7. Heard both sides. Perused the documents on record.

8. The trial court having founded that the petitioner had admitted the signature in the cheque and thereby in view of Section 20 of the Negotiable Instrument Act dismissed the petition stating that having admitted the signature in the cheque he cannot seek for sending the cheque to compare the entries in the cheque for expert opinion. The trial court has also found that there is no mechanism or expertise to find out the age of the ink in the cheque.

9. I do not find no infirmity in the order passed by the trial judge. Hence this Criminal Revision stands dismissed.

10. In the result, the Criminal Revision Petition stands dismissed and the learned Judicial Magistrate No.I, Jeyankondam is directed to complete the trial in STC No.164 of 2015 as expeditiously as possible.

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

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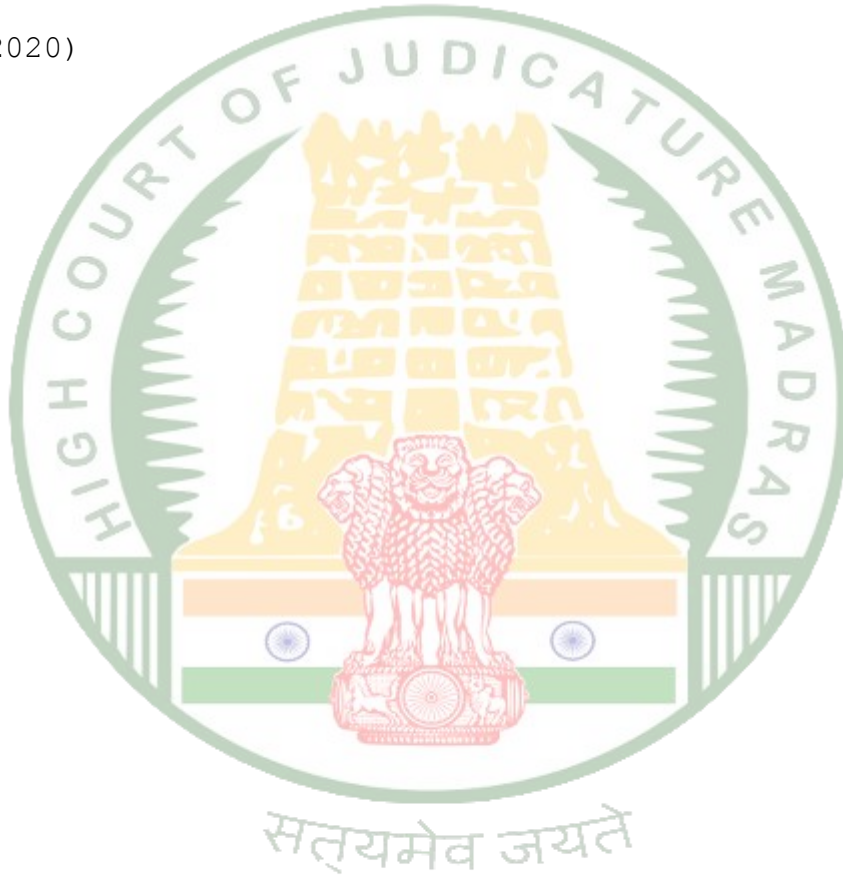
1.The Judicial Magistrate No.I,
Jeyankondam.

2.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.T.Gandhi, Advocate sr 94130.

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SP(06/02/2020)



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