

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.29287 of 2017
and CRL.M.P.No.16560 of 2017

Lenora Cladius

...Petitioner

Vs.

Dr.Nawaz Bhanu

....Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 31.08.2017 in Crl.R.C.No.05 of 2016 on the file of the IIIrd Additional Sessions Judge, Chennai confirming the order dated 22.01.2016 in Crl.M.P.No.3042 of 2014 in C.C.No.3036 of 2013 of the learned Metropolitan Magistrate, Fast Track Court 1, Egmore, Chennai.

For Petitioner : Mr.A.Raghunathan
Senior Counsel for
Mr.K.Arvind

For Respondent : Mr.T.P.Sekar

ORDER

This petition has been filed against the dismissal of the application filed under Section 45 of the Indian Evidence Act to send the cheque to a handwriting expert to compare the signature found in the cheque along with the admitted signature of the petitioner.

2. The respondent filed the complaint against the petitioner for an offence under Section 138 of the Negotiable Instruments Act. During the course of trial, the petitioner had denied the signature found in the cheque and had filed an application to send the cheque for expert opinion. The Fast Track Court 1, Allikulam, Chennai dismissed the application by an order dated 22.01.2016, on the ground that the Court itself can compare the signature in exercise of its power under Section 73 of the Indian Evidence Act and that the application has been filed only to drag on the proceedings.

3. The said order was challenged before the IIIrd Additional Sessions Court, Chennai. The Sessison Court by an order dated 03.08.2017 made in Crl.R.C.No.05 of 2016, dismissed the revision petition and confirmed the order passed by the Court below. Aggrieved by the same, the present petition has been filed before this Court.

4. When this case came up for admission, this Court directed the petitioner to proceed further and complete the cross-examination of PW1, who is the complainant. The cross-examination has also been completed. Even in the cross-examination, the petitioner has questioned the signature found in the cheque.

5. The learned Senior Counsel Mr.A.Raghunathan appearing on behalf of the petitioner submitted that when the petitioner is specifically denying the signature found in the cheque, the petitioner must be given opportunity to substantiate the same by sending the cheque for an expert opinion. The learned Senior Counsel submitted that such an opportunity becomes necessary in view of the fact that the petitioner has to rebut the presumption under Section 139 of the Negotiable Instruments Act.

6. The learned counsel appearing on behalf of the respondent submitted that the respondent even during the cross-examination has specifically taken a stand that the petitioner had signed the cheque in her presence. The learned counsel submitted that the case is of the year 2013 and its is being dragged for the last seven years and the petitioner who had signed the cheque, wants to take a different stand only with a view to drag on the proceedings.

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

8. The petitioner has taken a very specific stand that the signature found in the cheque is not her signature and the same has been forged. The petitioner has also put sufficient questions to the complainant during the cross-examination, in this regard.

9. Section 139 of the Negotiable Instrucments Act, creates a presumption in favour of the complainant and the initial burden is up on the accused person to rebut the presumption. In the instant case, the signature found in the cheque is being disputed and therefore the petitioner is seeking an opportunity to get an expert opinion on the signature found in the cheque, by comparing the same with the admitted signature.

10. The finding of the Court below to the extent that the Court itself has powers under Section 73 of the Indian Evidence Act to compare the admitted signature with that of the disputed signature found in the cheque, is liable to be rejected since it is now a settled law that the Court is not an expert in comparing signatures and it will always be safe to get an expert opinion in this regard. It is true that it takes sometime, since the cheque has to be sent along with admitted signature to the Forensic Science Department through an Advocate Commissioner and it takes sometime to receive the opinion. That itself cannot be put against the petitioner since the petitioner has raised an issue that the signature found in the cheque is forged, as a prime defence in this case.

11. In the result the order passed by both the Court belows is hereby set-aside. The Fast Track Court No.1, Allikulam, Chennai is directed to summon the specimen signature of the petitioner from the bank where he is having account. Thereafter, the disputed cheque shall be sent along with the specimen signature collected from the bank and also the signature found in the acknowledgment card, marked as Exhibit P.4, to the Forensic Science Department and the disputed signature shall be directed to be compared along with the specimen signature and the signature found in Exhibit P.4.

12. The Court below shall follow the regular procedure, it follows, for sending documents for expert opinion. The opinion shall be received within a period of two months and the proceedings shall be completed within a period of four months from the date of receipt of copy of this order.

13. This Criminal Original Petition is allowed with the above directions.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The IIIrd Additional Sessions Judge,
Chennai.

2. The Metropolitan Magistrate,
Fast Track Court 1,
Egmore, Chennai.

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