

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.1109 of 2018 and
CrI.M.P.No.12991 of 2018

B.Mohan

...Petitioner

-Vs-

M.Palaniammal

...Respondent

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for records and allow the criminal revision by setting aside the order dated 25.07.2018 passed by the learned Judicial Magistrate No.V, Salem, in C.M.P.No.1289 of 2018 in S.T.C.No.81 of 2016.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.M.Hariharan

ORDER

This criminal revision has been filed against the order dated 25.07.2018 passed by the learned Judicial Magistrate No.V, Salem, in C.M.P.No.1289 of 2018 in S.T.C.No.81 of 2016.

2 The petitioner is a complainant and respondent is accused. The petitioner had filed a private complaint against the respondent for the offence punishable under Section 138 of Negotiable Instrument Act, which was taken on file in S.T.C.No.81 of 2016 by the learned Judicial Magistrate No.V, Salem. Pending case, the respondent/accused has filed a miscellaneous petition in Cr.M.P.No.1289 of 2018, under Section 45 of Indian Evidence Act, seeking to send the disputed cheque to the Government Forensic Laboratory, Madras, for getting expert's opinion. The learned Magistrate, by order dated 25.07.2018, has allowed the petition stating that as already reiterated by the Court in its earlier order in Cr.M.P.No.3320 of 2017 filed by the respondent/accused for a similar prayer, the petitioner is entitled to file this petition at the stage of

243 of Cr.P.C. and is entitled for the prayer as sought for by him. Aggrieved against the said order, the complainant is before this Court with the present criminal revision case.

3 The learned counsel for the petitioner would submit that the cheque was returned only for "insufficient funds" and not for the reason that signature differs. Further the respondent has filed this petition after recording evidence in order to protract the case. The lower Court has not justified as to whether the vakalat filed after the date of issuance of cheque, is admissible for comparison. Hence the order passed by the Court below is liable to be set aside.

4 The learned counsel for the respondent would submit that the respondent has already filed petition, seeking similar prayer, but the Court below has directed the respondent/accused to file the petition at the stage of 243 of Cr.P.C and hence the respondent has filed the present petition seeking to send the disputed cheque for getting expert's opinion and the Court below has also allowed the petition, which does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that the respondent has already filed a petition in Cr.M.P.No.3320 of 2017 seeking a similar prayer, which is sought for in the present miscellaneous petition, and the Court below had given liberty to the respondent to file the petition, seeking expert's opinion, at the stage of 243 of Cr.P.C. Hence the Court below has allowed the petition filed by the respondent/accused and ordered to send the disputed cheque for getting expert's opinion. But, the trial Court is not justified in allowing the petition for comparison of vakalat with the disputed cheque, since vakalat is signed only after the date of issuance of the summons. The Court below should have directed the respondent to file any other document, which contains admitted signature at the relevant point of time, before receiving the statutory notice. Hence this Court is inclined to modify the order passed by the learned Magistrate.

7 The respondent/accused is directed to file a document, which contains admitted signature at the relevant point of time, before the learned Magistrate and the Magistrate is directed to send the document to be filed by the respondent/accused for comparison.

8 With the above directions, the criminal revision case is disposed of. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.V, Salem.

+1cc to M/s.T.M.Hariharan, Advocate SR.24949

CrI.R.C.No.1109 of 2018 and
CrI.M.P.No.12991 of 2018

CP(CO)
CB(10/02/2020)