

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.29061 of 2018
and
Cr1.M.P.No.17001 of 2018

Biju Padmanabhan

..Petitioner

Vs

Sree Gokulam Investments,
No.66 (old No.356)
Arcot Road, Chennai - 600 024.
Represented by its Power Agent,
Mr.R.Srinivasan

..Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in STC.No.2498 of 2007 pending on the file of the learned XIV Small Causes Court, Chennai and set aside the order of the learned Judge, XIV Small Causes Court, Chennai dated 22.02.2018.

For Petitioner : Mr.N.Ravishankar Vallatharasu

For Respondent : Mr.R.S.Kirubakaran

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O R D E R

This petition is filed challenging the adjudication proceedings dated 22.02.2018 in S.T.C.No.2498 of 2007 on the file of the learned XIV Small Causes Judge, City Civil Court, Chennai, whereby, the learned Magistrate kept in abeyance the process of comparing the signature and allowed the parties to let in evidence to substantiate their respective cases.

2. The learned counsel for the petitioner submitted that the respondent has preferred a complaint for the offence under Section 138 of the Negotiable Instruments Act alleging that the petitioner borrowed a sum of Rs.51,00,000/- and to repay the same, issued a cheque for the said sum. It was dishonoured and as such he filed a complaint for the offence under Section 138 of Negotiable Instruments Act. Pending the proceedings, the petitioner filed an application under Section 45 of Evidence Act

to send the cheque to an hand writing expert to verify and compare the signaure in the cheque with the petitioner's specimen signature. For the said petition, the respondent had no objection and it was allowed to verify the signature in the cheque.

3. The Advocate Commissioner, Mr.Hemarajan was appointed to complete the process of comparing the signature. The said Advocate Commissioner informed the Court that he has shifted his practice from Chennai to Villupuram and expressed his inability to execute the warrant to get expert opinion. Therefore, without appointing another Advocate Commissioner, the learned Magistrate simply passed an order that the process of comparing the signature should be kept in abeyance and allowed the parties to let in evidence. Therefore, he prayed for setting aside the said adjudication process.

4. Per contra, the learned counsel for the respondent would contend that the signature found in the cheque is that of the petitioner and only to drag on the proceedings, he had filed a petition under Section 45 of the Evidence Act to compare the signature of the petitioner. Though, the learned Magistrate appointed an Advocate Commissioner to get expert opinion in respect of the signature in the cheque, subsequently, he returned his warrant due to non-availability. Therefore, the learned Magistrate rightly directed the parties to let in evidence and that during the trial, it can be considered. Therefore, he prayed for dismissal of this petition.

5. Heard, Mr.N.Ravishankar Vallatharasu, learned counsel appearing for the petitioner and Mr.R.S.Kirubakaran, learned counsel appearing for the respondent.

6. A perusal of records shows that the respondent lodged a complaint under Section 138 of the Negotiable Instruments Act against the petitioner. The petitioner denied his signature and filed a petition under Section 45 of Evidence Act to compare the signature found in the cheque with the petitioner's specimen signature. It was allowed by the learned Magistrate and one Advocate was appointed as Commissioner and due to inability of the Advocate Commissioner, he returned his warrant. Instead of appointing another Advocate Commissioner, the learned Magistrate passed an order that the process of comparing the signature should be kept in abeyance and allowed the parties to let in evidence. Virtually, the learned Magistrate commenced the trial, pending Section 45 of Evidence Act proceedings.

7. Considering the facts and circumstances, the adjudication order dated 22.02.2018 is hereby set aside. Consequently, learned XIV Small Causes Court, Chennai is directed to appoint

another Advocate Commissioner to get expert opinion by comparing the signature found in the alleged cheque with the admitted specimen signature of the petitioner. The entire process of getting expert opinion is directed to be completed within a period of two months from the date of receipt of a copy of this order. Thereafter, the learned XIV Small Causes Court, Chennai is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

8. With the above observations and directions, the Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The learned Judge,
XIV Small Causes Court,
Chennai.

+1 cc to Mr.R.S.Kirubakaran, Advocate, S.R.No.14027

+1 cc to Mr.N.Ravishankar Vallatharasu, Advocate, S.R.No.13004

Cr1.O.P.No.29061 of 2018

PP(CO)
SSM(21/03/2019).