

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1461 of 2018
and
Crl.M.P.No.17191 of 2018

Parvathi

... Petitioner

Versus

A.Palanivel

... Respondent

The Criminal Revision has been filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order dated 28.09.2018 made in C.M.P.No.2944 of 2018 in C.C.No.315 of 2017 on the file of the learned Judicial Magistrate, Fast Court Magisterial Level, Ambattur, Tiruvallur District.

For Petitioner : Mr.M. Ganapathi

O R D E R

This Criminal Revision has been filed to set aside the order dated 28.09.2018 in C.M.P.No.2944 of 2018 in C.C.No.315 of 2017 on the file of the learned Judicial Magistrate, Fast Court Magisterial Level, Ambattur, Tiruvallur District, dismissing the petition in C.M.P.No.2944 of 2018 in C.C.No.315 of 2017 filed under Section 45 of Indian Evidence Act, seeking expert's opinion to ascertain the hand writing variance and the age of the ink. After hearing both sides, the learned Judicial Magistrate dismissed the petition, by order dated 28.09.2018. The said order is put in challenge in the present criminal revision case.

2. According to the learned counsel appearing for the petitioner the petitioner has admitted the signature found in the cheque and he has clearly stated this fact in reply notice as well as in the cross-examination. He has only admitted the signature and not the recitals mentioned in the cheque. Further, the learned counsel for the petitioner would submit that the petitioner has issued only a blank cheque. Therefore, the contents found in the above said exhibit should be examined by

an expert and only on such verification by the expert, truth of the transaction could be ascertained. Therefore, the cheque has to be sent for expert opinion under Section 45 of Indian Evidence Act. Therefore, order passed by the learned Magistrate warrants interference of this Court.

3. Heard the learned counsel appearing for the petitioner and perused the materials on record.

4. The petitioner has admitted the signature found in the cheque. Therefore, it is for him to prove under what circumstances he has signed and given the blank cheque. It is for the revision petitioner to rebut the presumption under Sections 118 and 138 of Negotiable Instruments Act and not by way of getting an expert opinion. Even otherwise getting the expert opinion is not conclusive proof. It is only a piece of evidence. Under these circumstances, when the petitioner himself has admitted that he denied his recitals in the cheque, there is no need to send the cheque for examination. He has not stated any reason as to why he has not filed this application even before the complainant coming to the box. After evidence of the complainant, when the matter was posted for defense witness, only at that time, he has filed this petition. Therefore, it shows that he has fixed the application only to protract the case. This Court does not find any justification in the application at the fag end of the trial. Under these circumstances, there is no merit in the revision and there is no ground made out to interfere with the order passed by the learned Magistrate.

5. From the above, it is very clear that the petitioner herein, who is accused, was only attempting to drag on the proceedings under the pretext of filing petition under Section 45 of Indian Evidence Act and therefore, the trial Court has rightly dismissed the petition as it devoid of merits. This Court does not find any reason that the said order requires interference of this Court and therefore the present criminal revision is devoid of any merits and the same is accordingly dismissed at admission stage itself. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rli

To

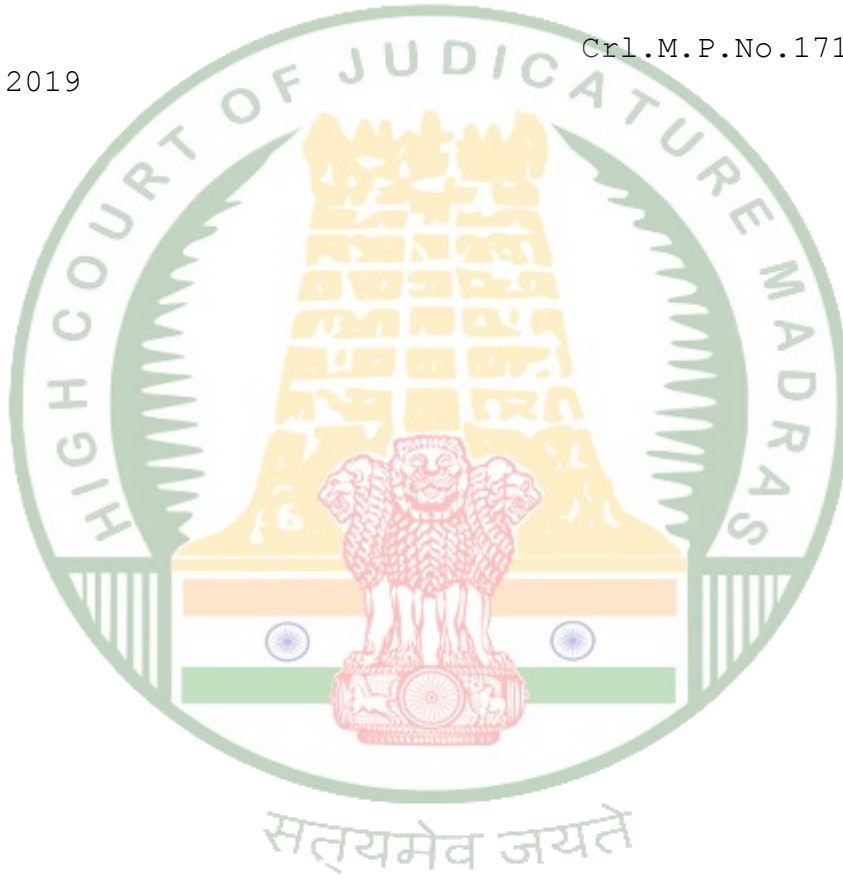
The Judicial Magistrate,
Fast Court Magisterial Level,
Ambattur,
Tiruvallur District.

+1 cc to Mr.M.Ganapathi, Advocate Sr.No.12174

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CSL/18.03.2019



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