

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 29.01.2019****CORAM****THE HONOURABLE MR.JUSTICE P.VELMURUGAN****Crl.R.C. [MD]No.816 of 2016****WEB COPY**

Vengadasuppu

: Petitioner

Vs.

T.R.Rajaprabhu

: Respondent

PRAYER : Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 24.11.2016 made in Crl.M.P.No.2962 of 2016 in S.T.C.No.13 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Uthamapalayam and allow the said application.

For Petitioner : Mr.V.Sidharanjandoss
for Mr.V.Nagarajan

Respondent : Mr.K.Guhan

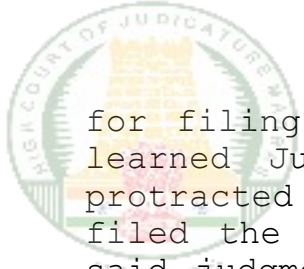
O R D E R

This Criminal Revision Case has been filed against the order passed in Crl.M.P.No.2962 of 2016 in S.T.C.No.13 of 2016 by the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Uthamapalayam, dated 24.11.2016.

2.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent.

3.The respondent preferred a complaint against the revision petitioner under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instrument Act. When the matter was pending in S.T.C.No.13 of 2016, after completing the respondent / complainant side evidence and during the examination of defence witness, the revision petitioner / accused has filed a petition under Section 45 of Indian Evidence Act to send the disputed cheque for comparison to the Forensic Department, to ascertain the age of the ink and the details filled in the cheque and also the signature. After hearing the arguments, by order dated 24.11.2016, the learned Judicial Magistrate, dismissed the petition stating that the technology has not developed and not possible to find out the age of the ink. Challenging the same, the revision petitioner /Accused is before this Court with this revision.

4.The learned Counsel for the petitioner would submit that the learned Magistrate though has given a finding that the technology has not developed to find out the age of the ink, whereas this Court has already held in the case of A.Sivagnana Pandian Vs. M.Ravichandran in Crl.R.C.No.145 of 2010, in which, the disputed document has to be referred to the expert for ascertaining the age of the ink and further he would submit that there is no limitation

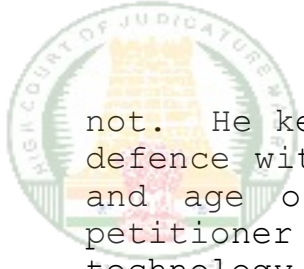


for filing a petition under Section 45 of Limitation Act and the learned Judicial Magistrate has not stated that the petitioner protracted the proceedings and only stated that the petitioner has filed the petition belatedly. Therefore, he relied on the above said judgment. In this case, even though ascertaining the age of the ink is not possible but the difference in hand writing can be ascertained through the opinion of the expert. Therefore, the judgment of the learned Judicial Magistrate warrants interference.

5. The learned Counsel for the respondent / complainant would submit that the complaint was filed even in the year 2014 and the petition was filed in the year 2016, he has not taken any steps to send the disputed cheque for expert opinion. Only after examining the complainant witness and at the time of examination of the defence witness, he has filed this petition. Further, the learned Counsel for the respondent also relied on the Judgment reported in (2015) 1 MLJ (CrL.) 531 in the case of A. Inayathullah Vs. A. Ramesh, in which it is held that there is no technology to find out the age of the ink and hence there is no merit in this revision.

6. Heard and perused the records.

7. Admittedly the revision petitioner is the accused and the respondent is the complainant. The complainant filed complaint against the revision petitioner for the offence under Section 138 of Negotiable Instrument Act, in the year 2014 and the petition was filed in the year 2016, in which after completion of complainant witness on 5.5.2016 and after completing 313 proceedings, the defence witness was taken and during the examination of defence witness on 26.10.2016, the revision petitioner has filed this petition before the learned Judicial Magistrate under Section 45 of Indian Evidence Act to refer the disputed cheque to Central Forensic Science Laboratory to find out the age of the ink and signature. The learned Judicial Magistrate dismissed the petition on merits stating that there is no technology to find out the age of the ink. Further it is filed belatedly. Though the learned Counsel for the petitioner would submit that it may not be possible to find out the age of the ink, but the difference of hand writing is possible and it will be helpful to his case. Further there is no limitation to file a petition under Section 45 of Indian Evidence Act. Therefore the order of the learned Judicial Magistrate needs interference of this Court. However, on reading of the entire materials the complaint is pending from 2014, even prior to that, it is admitted by the revision petitioner that he received the statutory notice but he has not sent any reply and not disputed the issuance of cheque and signature. Further after receiving summons he has not taken any steps for two years to send the cheque to Forensic Department and he has not stated that he was not aware of the complaint. When he received the complaint, he has not given any reply and asked for the copy of the cheque to find out anything is favourable to him, to file a memo before the Court to verify the cheque and ascertain the fact that the signature found in the cheque is that of himself or



not. He kept quiet for two years. Therefore, after commencement of defence witness, he has filed a petition to ascertain the signature and age of the ink and also the citations referred to by the petitioner are not applicable to the case on hand. There is no technology, as on date to find out the age of the ink. However, the revision petitioner has not taken any steps to ascertain the handwriting of details found in the cheque. In the earlier stage, fair opportunity was given for more than two years. At the time of defence witness only he has filed this petition. Therefore, under these circumstances, this Court does not find any perversity in the order of the learned Judicial Magistrate. Under these circumstances, the revision petitioner has not disputed the cheque and has only sought to find out the age of ink.

8. In view of the above, this Court does not find any reason or sound ground to interfere with the order passed by the learned Judicial Magistrate, Uthamapalayam and there is no merit in this revision.

9. Accordingly, the Criminal Revision Case is dismissed.

sd/
Assistant Registrar(records)

/True Copy/

Sub Assistant Registrar(CS)

To

The Judicial Magistrate,
Fast Track Court (Magistrate Level),
Uthamapalayam.

+1 CC to Mr.K.GUHAN, Advocate (SR-43428[F] dated 30/01/2019)
+1 CC to Mr.V.NAGARAJAN, Advocate (SR-43440[F] dated 30/01/2019)

Cr1.R.C.[MD]No.816 of 2016
29.01.2019

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