

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22967 of 2016 and
Crl.M.P.No.10765 of 2016

P.K.Subramaniam

... Petitioner

Vs.

1.M/s.Mohan & Co.,
Venkateswara Sago Factory by its,
Managing Partner P.Mohan,
R.Pudupatti, Rasipuram TK., Namakkal District.

2.P.Mohan,
S/o.Ponmalai Gounder,
Managing Partner,
M/s.Mohan & Co,
Venkateswara Sago Factory,
R.Pudupatti, Rasipuram TK, Namakkal District. ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.3283 of 2015 in C.C.No.231 of 2012 dated 18.02.2016 on the file of the learned Judicial Magistrate, Rasipuram, Namakkal District.

For Petitioner : Mr.R.Karthikeyan

For Respondents: Mr.T.Dhanyakumar

ORDER

The petitioner/complainant filed a private complaint against the respondents/accused in C.C.No.231 of 2012, for offence under Section 138 of the Negotiable Instruments Act, which is pending on the file of the Judicial Magistrate Court, Rasipuram.

2.The respondents filed a petition under Section 45 of the Indian Evidence Act in C.M.P.No.3283 of 2015 in C.C.No.231 of 2012 to send the cheque along with specimen signature of the 2nd respondent, which was summoned from Indian Overseas Bank, Leigh Bazaar, Salem, to the Director of Forensic Science, Chennai to nominate handwriting expert to compare and study both the signatures and to send a report. The trial Court by order dated

18.02.2016 allowed C.M.P.No.3283 of 2015, against which the present petition.

3.The gist of the case is that the petitioner filed a private complaint against the respondents herein and the wife of the 2nd respondent/M.Jayanthi for offence under Section 138 of the Negotiable Instruments Act, stating that there was some business transaction between the petitioner and the respondents. The respondents were running a factory in the name of M/s.Mohan & Company Venkateswara Sago Factory, Rasipuram, Namakkal. Towards the business, Rs.11 lakhs was due by the respondents to the petitioner, for which the respondents had given a cheque bearing No.014099, dated 05.06.2007 of the Indian Overseas Bank, Leigh Bazaar, Salem, which was presented by the petitioner in Lakshmi Vilas Bank, R.Pudhupatty Branch. The said cheque got dishonoured on 07.06.2007 for the reason "Exceeds Arrangement".

4.The petitioner issued statutory notice on 22.06.2007 to the respondents. On receipt of the same, the respondents sent a reply, denying the liability and the signature found in the cheque was not signed by the respondents. Annoyed over the same, the petitioner lodged a private complaint before the learned Judicial Magistrate, Rasipuram. During the pendency of the complaint, the wife of the 2nd respondent filed a quash petition before this Court in CrI.O.P.No.22370 of 2009, in which this Court by order dated 17.03.2015 quashed the proceedings in C.C.No.231 of 2012 against her alone. The respondents filed CrI.O.P.No.23050 of 2009, seeking to set aside the order dated 27.11.2008 in C.M.P.No.1902 of 2008 in C.C.No.231 of 2012 passed by the learned Judicial Magistrate, Rasipuram, rejecting for production of the specimen signature of the 2nd respondent from the bank on which the cheque was drawn. This Court by order dated 17.03.2015 allowed the petition and set aside the order dated 27.11.2008 in C.M.P.No.1902 of 2008 in C.C.No.231 of 2012 of the Court below, directing the learned Judicial Magistrate, Rasipuram to summon the specimen signature found in the bank account. The respondents filed a petition under Section 45 of the Evidence Act in C.M.P.No.563 of 2009 in C.C.No.231 of 2012 to send the disputed cheque of the 2007 for comparing the signature of the 2nd petitioner. The learned Judicial Magistrate, Rasipuram by order dated 26.03.2009 dismissed the petition, against which, the respondent filed CrI.R.C.No.6 of 2009 before the learned Principal Sessions Judge, Namakkal and the revision also dismissed on 19.08.2009, against which the respondents moved CrI.O.P.No.22725 of 2009, in which this Court by order dated 17.03.2015, dismissed the petition by confirming the revision.

5.Thereafter, the respondent filed C.M.P.No.3283 of 2015 before the learned Judicial Magistrate, Rasipuram, Namakkal

under Section 45 of the Indian Evidence Act to forward the signature found in the cheque and the specimen signature for comparison to the Forensic Department and to get a report. The learned Judicial Magistrate, Rasipuram, Namakkal allowed the petition, against which the present petition.

6.The learned counsel for the petitioner submitted that this Court earlier confirmed the dismissal of C.M.P.No.563 of 2009 in C.C.No.231 of 2012 seeking to send the cheque to handwriting expert by order dated 17.03.2015 in CrI.O.P.No.22725 of 2009. Now, with the same prayer, the respondents have filed C.M.P.No.3283 of 2015 under Section 45 of the Indian Evidence Act to compare the signature of the 2nd respondent found in the cheque with his specimen signature, which the lower Court ought to have dismissed. In view of this Court confirming the order of earlier dismissal order of the trial Court, this Court may set aside the order of the trial Court in C.M.P.No.3283 of 2015.

7.The learned counsel for the petitioner further submitted that in this case, till now the petitioner has not mentioned the age of the specimen signature and the date of opening of account, which is significant to find out whether the specimen signature is contemporaneous with the signature in the cheque. The respondents has been filing one petition or other and successfully dragging the trial. Originally, the case has been filed before the trial Court in S.T.C.No.1383 of 2007. Thereafter, it has been renumbered as C.C.No.231 of 2012. Now more than 13 years, since the compliant was filed. He further submitted that if the specimen signature and the disputed cheque are forwarded to the Forensic Department for opinion of the handwriting expert, it would further delay the trial. Now, the case is at the stage of defence and the accused has been questioned under Section 313 Cr.P.C. Therefore, he prayed this Court to set aside the order dated 18.02.2016 in C.M.P.No.3283 of 2015 in C.C.No.231 of 2012.

8.The learned counsel for the respondents submitted that the specific case of the respondents is that the respondents stopped the sago business in the year 2002. The contention of the learned counsel for the petitioner is that the petitioner and the respondents were having business relationship in supply of sago and in course of business, the cheque has been issued in the year 2007, which cannot be said so, since the 1st respondent stopped the business in the year 2002 and he also sent a reply notice to the statutory notice. The petitioner using the cheque, which was given as security, filling up the same, caused harassment and humiliation to the respondents and also filed the above private complaint, knowing well the 2nd respondent's wife is no way involved in the business. Thereafter, the case against her was quashed by this Court in CrI.O.P.No.22370 of

2009 dated 17.03.2015. The petitioner cannot draw common analogy on the order of this Court dated 17.03.2015 in Crl.O.P.No.22725 of 2009 in declining to forward the cheque and the specimen signature to the Forensic Department. The petition filed by the petitioner under Section 45 of the Indian Evidence Act was filed to compare the signature found in the cheque issued in the year 2007 and the specimen signature in lease agreement of the year 2008. This Court in Crl.O.P.No.22725 of 2009 observed that the cheque is of the year 2007 and the lease deed is of the year 2008 and the signature cannot be compared, since it is not a contemporaneous document. Further, the signature in the lease agreement is after the disputed cheque of the year 2007. He further submitted that this Court in Crl.O.P.No.23050 of 2009, dated 17.03.2015 directed the learned Judicial Magistrate, Rasipuram to summon the specimen signature of the 2nd respondent from the Indian Overseas Bank, Leigh Bazaar, Salem. The documents has been summoned and now, it is in custody of the Judicial Magistrate Court, Rasipuram. The summoning of documents is for the purpose of comparing with the signature found in the cheque. In view of the same, the petitioner cannot have any objection, since the order in C.M.P.No.3283 of 2015 is only a consequential order of this Court in Crl.O.P.No.23050 of 2009.

9.This Court considered the rival submissions and perused the materials available on record.

10.This Court by order dated in Crl.O.P.No.23050 of 2009, dated 17.03.2015 directed the learned Judicial Magistrate, Rasipuram to summon the specimen signature of the 2nd respondent from the Indian Overseas Bank, Leigh Bazaar, Salem. Pursuant to the same, the specimen signature is summoned and it is now in the custody of the Judicial Magistrate Court, Rasipuram. It is logical that this specimen signature to be compared with the disputed signature for which it has to be forwarded to the handwriting expert attached to the Directorate of Forensic Department, Chennai. The dismissal of order in Crl.O.P.No.22725 of 2009, dated 17.03.2015 does not restrain the lower Court in forwarding the documents to the handwriting expert.

11.In view of the above, this Court does not find any illegality or perversity in the order dated 18.02.2016 in C.M.P.No.3283 of 2015 in C.C.No.231 of 2012 and the same is confirmed.

12.Considering the apprehension of the petitioner that by sending the documents to Handwriting Expert would cause further delay and taking into consideration, the case is of the year 2007 and a case under Section 138 of the Negotiable Instruments Act kept pending for the past 13 years, the learned Judicial

Magistrate, Rasipuram, Namakkal is directed forward the disputed cheque and the specimen signature through Advocate Commissioner to the Director, Forensic Science Department, Chennai. The expense and cost for the same to be fixed by the trial Court, which shall be deposited forthwith by the respondents. The Director, Forensic Science Department, Chennai is to nominate Handwriting Expert, conclude the examination, send a report and documents to the Judicial Magistrate Court, Rasipuram through the Special Messenger or Advocate Commissioner within a period of two months. On receipt of the report, the learned Judicial Magistrate, Rasipuram is to conclude the trial within a period of one month thereof. The time limit commence 15 days from the date of lifting of lock down and normal functioning of Court below.

13. With the above directions, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court,
Rasipuram.

2. The Director, Forensic Science Department,
Mylapore, Chennai.

+1cc to Mr. Karthikeyan, Advocate, sr no. 27043

PA (CO)
RMP (03/11/2020)

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Cr1.O.P.No.22967 of 2016

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