

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.07.2020

Coram:

The Honourable Mr. Justice G.K.ILANTHIRAIYAN

CRL.OP.No.2638 of 2020
and
CRL.MP.Nos.1582 & 1583 of 2020

Bharathi Sampathkumar Petitioner/Accused
Vs.

P. Ramesh Kumar Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order passed in Crl.MP.No.458 of 2019 in STC.No.620 of 2017 dated 10.10.2019 on the file of the Judicial Magistrate (Fast Track Court No.II), Erode and confirmed in Crl.RP.No.44 of 2019 dated 20.12.2019 on the file of the Principal Sessions Judge, Erode.

For Petitioner : Mr.R.Karthikeyan

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed to set aside the order passed in Crl.MP.No.458 of 2019 in STC.No.620 of 2017 dated 10.10.2019 on the file of the learned Judicial Magistrate (Fast Track Court No.II), Erode and confirmed in Crl.RP.No.44 of 2019 dated 20.12.2019 on the file of the learned Principal Sessions Judge, Erode.

2. The learned counsel for the petitioner would submit that the petitioner is an accused in the complaint lodged by the respondent in STC.No.620 of 2017 for the offences punishable under Sections 138 of Negotiable Instruments Act. While at the time of cross examination of PW1, it was found that the signature found in Ex.P1/alleged cheque, the signature found to be a different one and not signed by the petitioner. Therefore, the petitioner has filed a petition under Section 45 of the Indian Evidence Act to send the cheque for opinion of the hand writing expert. The said petition was dismissed only on the ground that the petitioner while issuing reply notice to the statutory notice issued by the respondent did not deny the

signature found in the alleged cheque. The revisional court also mechanically followed the stand taken by the trial court and dismissed the revision. He further submitted that in reply notice/Ex.P6, he categorically denied even the issuance of cheque and also the respondent is a stranger to the petitioner and there is absolutely no legally enforceable debt to the respondent herein. Therefore, the petitioner ought not to have issued any cheque to the respondent and sought for the alleged cheque to be sent for hand writing expert's opinion.

3. Heard Mr.R.Karthikeyan, learned counsel for the petitioner.

4. The petitioner is an accused in the complaint lodged by the respondent for the offences punishable under Section 138 of Negotiable Instruments Act. The complaint was originally filed in the year 2013 and the respondent / complainant was examined as PW1 in-chief. While cross examining PW1, the petitioner has filed this petition under Section 45 of the Indian Evidence Act to send for expert's opinion along with admitted signature of the accused. The petitioner is also an accused in STC.No.34 of 2012 arising out of the offence punishable under Section 138 of the Negotiable Instruments Act.

5. Though the said complaint was dismissed for default, the petitioner wanted to compare the signature with the cheque involved in STC.No.34 of 2012 with the alleged cheque in the present complaint.

6. On perusal of the reply notice, it was marked as Ex.P6 before the trial court. The respondent though denied the very issuance of the cheque for legally enforceable debt and also stated that the respondent is stranger to him and he never issued any cheque in discharge of any legally enforceable debt. In the same reply notice, in paragraph No.5, the petitioner stated that the Allahabad Bank account was closed several years ago and the cheque alleged to be issued to the respondent must be several years old cheque and the same was obtained by him. He further stated that the alleged cheque was not issued to the respondent to discharge any debt or any legal liability. Therefore, the petitioner did not deny his signature found in the cheque. Further, the C.C is of the year 2013 and subsequently, it was transferred to the Judicial Magistrate (Fast Track Court No.II), Erode and re-numbered as STC.No.650 of 2017. Therefore, the petition filed by the petitioner is nothing but to drag the proceedings. Therefore, the court below has rightly dismissed the petition filed by the petitioner under Section 45 of the Indian Evidence Act. As such, this court finds no irregularity or infirmity in the order passed by the court below.

7. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed. However, the trial court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

gv

Sd/-

Assistant Registrar

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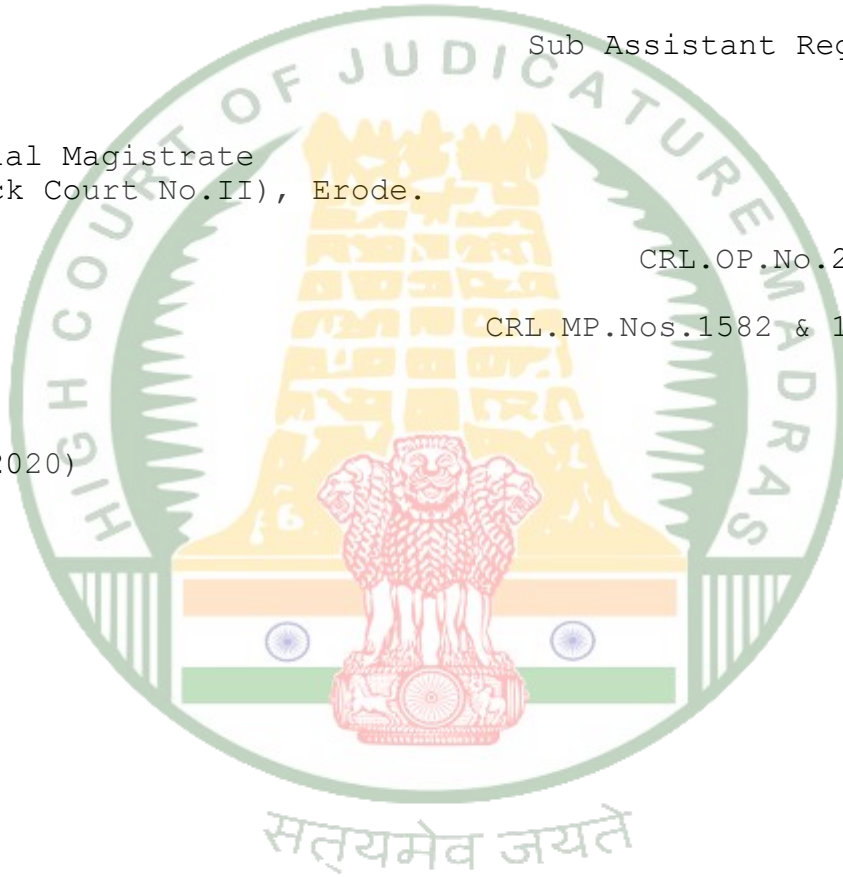
Sub Assistant Registrar

To

The Judicial Magistrate
(Fast Track Court No.II), Erode.

CRL.OP.No.2638 of 2020
and
CRL.MP.Nos.1582 & 1583 of 2020

SKS (CO)
GN (24/09/2020)



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