

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.RC.No.1060 of 2020
and CRL.M.P.No.7351 of 2020

R.Ramanathan,
S/o.Rajamani

.. Petitioner

/versus/

V.Manickavasagam

.. Respondent

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure, filed to set aside the order passed in C.M.P.No.1938 of 2019 dated 19.08.2020 in C.C.No.62 of 2016 on the file of the Fast Track Judicial Magistrate No.I Court of Coimbatore by the way of the documents produced by the revision petitioner and the original complaint reflecting the present respondent's signature for signature comparison and experts opinion.

For Petitioner :

Ms.Pooja Shree

ORDER

This Criminal Revision Case is filed by the petitioner who is accused in C.C.No.62 of 2016 filed under Section 138 of Negotiable Instruments Act by the respondent/complainant which is pending before the Fast Track Judicial Magistrate No.I, Coimbatore.

2.The petitioner filed a petition under Section 45 of the Evidence Act, before the Lower Court in C.M.P.No.1938 of 2019. The Court below by its order dated 19.08.2020 dismissed the same.

3.The gist of the case is that the petitioner is an accused before the Lower Court has filed a petition stating that the petitioner had not borrowed any amount from the respondent/complainant. The petitioner issued a disputed cheque along with the two other cheques to M/s. Duruva Finance, Coimbatore where respondent/complainant was working as a collection Manager. The respondent coming in possession of one of the cheque, misused the same and filed a complaint against the petitioner. There is no liability or any transaction with the respondent and hence the cheque disputed that cheque was given in discharge of liability. Further the petitioner wanted the receipt of M/s.Durva Finance Limited to be compared with the signature found in the complaint to prove the fact that the respondent was working as collection manager there. The respondent denies that he worked in M/s.Durva Finance Company. hence it is necessary to send the receipt to the handwriting expert.

4.The contention of the learned counsel for the petitioner is that the petitioner got no financial assistance from the respondent, who is working as collection Manager in M/s.Durva Finance. The petitioner handed over three cheques to M/s.Durva Finance, out of which one cheque has been removed and filled up by the respondent and filed a case against the petitioner. The petitioner earlier filed C.M.P.No.8509 of 2017 for examining the handwriting of the respondent found in the complaint and in the receipt copy of M/s.Durva Finance. This petitioner was dismissed by order dated 07.07.2018 for the reason that " It is difficult to compare the signature with the photocopy of the receipt". Thereafter the petitioner traced and found the original copy of the receipt and the same has been produced before Lower Court and again a petition under Section 45 of the Evidence Act in C.M.P.No.1983 of 2019 was filed to send the original receipt of the complaint to compare the signature. By order dated 19.08.2020, the Court below dismissed the same for the reason that the respondent in his evidence stated that he had got nothing to do with M/s.Durva Finance and for the first time he is hearing about the same. The petition filed before the Lower Court had not been considered in right perspective and dismissed for the reason that the earlier similar petitioner was filed and the same was dismissed and the petitioner had failed to explain why and how the cheque was entrusted to M/s.Durva Finance.

5.This Court considered the submission and perused the materials available in records.

6.The copy of the petition and order in C.M.P.Nos.1938 of 2019 & 8507 of 2017 and the certified copy of the deposition of PW1 and written submission of the petitioner filed before the Lower Court in C.M.P.Nos.1938 of 2019 & 8507 of 2017 are produced.

7.In this case, the respondent examined himself as P.W.1 he had filed the proof of affidavit on 16.03.2016. The cheque bearing No.150022 dated 10.08.2013 marked as Ex.P1, return memo dated 13.08.2013 marked as Ex.P2, statutory notice dated 19.08.2020 marked as Ex.P3 and postal acknowledgement card marked as Ex.P4. The respondent during cross examination on 02.06.2017 stated that " நான் துரவா பைனான்ஸ் என்ற நிறுவனத்தில் 2014-ம் ஆண்டு மேலாளராக வேலை பார்த்தேன் என்றால் சரியல்ல. அந்த நிறுவனத்திற்கும் எனக்கும் எந்தவித சம்மந்தமும் இல்லை என்றால் சரிதான் " It is seen that the cheque dated 10.08.2013, return memo dated 13.08.2013 and statutory notice dated 19.08.2013. During cross examination of the respondent, the suggestion putforth by the petitioner is that the respondent was working as Manager in M/s.Duruva Finanance during the year 2014. In view of this suggestion, the petitioner wants to send receipt of M/sDuruva Finance to the Hand Writing Expert, in which the respondent signature is found.

8.This Court on the submissions and perusal of the materials finds that the study by the handwriting expert does not arise, for the reason that cheque in this case was issued in the year 2013 and the specific suggestion of the petitioner is that from

the year 2014, the respondent was working as Manager in M/s.Duruva Finance. In view of the same, the respondent working in M/s.Duruva Finance and Signature available in the receipt will no way further case of the petitioner.

9.The learned counsel for the petitioner submitted that the suggestion put forth by the petitioner during cross examination are observed in the impugned order as though it is an admission of the petitioner. It is hereby clarified that the suggestion put forth to the witness is only putting forth the case of the defence and it cannot be construed as admission.

10.Accordingly, the revision is dismissed and order made in C.M.P.No.1938 of 2019, dated 19.08.2020 in C.C.No.62 of 2016 on the file of the Fast Track Judicial Magistrate No.I, Court of Coimbatore is hereby affirmed. The observation made herein are only for the disposal of the above revision and the Trial Court is to independently consider the evidence and materials available in this case and complete the Trial. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rst

To:

1.The Fast Track Judicial Magistrate NO.1,
Coimbatore.

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SRI (CO)
GSP (16/12/2020)

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