

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1114 of 2015
and
M.P.No.1 of 2015

R. Vijayalakshmi .. Petitioner/Accused
Vs.
P. Muthuraj .. Respondent/Complainant

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records relating to the order in Crl.M.P.No.3400 of 2015 in S.T.C.No.134 of 2014 dated 30.09.2015 on the file of the Judicial Magistrate (Fast Track Court), Tiruchengode and set aside the same.

For Petitioner : Mr.V. Elangovan

For Respondent : No Appearance

O R D E R

The matter is heard through "Video Conference".

2. Heard, the learned counsel for the petitioner. Though notice was served on the respondent, there is no representation on behalf of the respondent.

3. This criminal revision case is filed against the order dated 30.09.2015, passed by the learned Judicial Magistrate (Fast Track Court), Tiruchengode, in Crl.M.P.No.3400/2015, which was filed under Section 45 of the Indian Evidence Act to send the cheque to the Forensic Department for verification of the signature of the accused in the cheque. As the said petition was disputed, the learned Judicial Magistrate had dismissed the same.

4. The respondent filed a case against the petitioner under Section 138 of Negotiable Instruments Act on the ground that the cheque issued by the petitioner dated 19.06.2014 for a sum of Rs.4,00,000/- was dishonoured with the endorsement "Insufficient of funds" and "drawer's signature differs from the specimen of record", and the petitioner has not chosen to repay the amount mentioned in the cheque. Hence, the complaint.

5. Since the signature found in the cheque was forged one,

the petitioner filed a petition under Section 45 of the Evidence Act in CrI.M.P.No.3400 of 2015 for an order to compare the dispute signature found in the cheque dated 10.06.2014 along with the admitted signature in order to get the expert opinion. However, the learned Magistrate dismissed the above petition on 30.09.2015. As against which the petitioner is filing this revision petition.

6. After going through Ex.P2 bank return memo, I find that in addition to insufficiency in the accounts, the bank also noted that the signature found in the cheque varies. The allegation of the petitioner was also corroborated by the returned slip issued by the bank that "Drawer's signature differs from the specimen on record". Thus, It is necessary to send the disputed signature for expert opinion and the trial Court ought to have ordered the petition filed under Section 45 of the Indian Evidence Act.

7. The genuineness of the signature can be questioned only at the time of trial. It is open to the trial Court to exercise the power under Section 73 of the Indian Evidence Act, to compare the signature found in the disputed cheque as well as the admitted documents, but the facts remains that it is always better to send the disputed signatures for expert opinion as it will help the trial Court to resolve the issue involved.

8. It is seen that the signature disputed by the accused, the particulars has to be given to him to explain the situation and hence, the comparison with the admitted signature on contemporaneous period. In this regard, the Hon'ble Supreme Court in the case of T.Nagappa Vs. Y.R.Muralidhar reported in reported in (2008 (5) SCC 633), wherein the Hon'ble Supreme Court of India has held that in such circumstances, it is better to send the signature found in the disputed cheque for expert opinion. The said judgment of the Hon'ble Supreme Court was referred by the Madurai Bench of this Court in CrI.R.C.No.473/2014 dated 19.01.2015.

9. In view of the above factual position, I find that the above said decision of the Hon'ble Supreme Court and the decision of the Madurai Bench of this Court (cited supra) are squarely applicable to the facts of the present case. Since it is the petition filed under Section 45 of the Evidence Act, taking into consideration, the one of the reason for return of cheque is that the signature found in the cheque found to be at variance as the sample signature in bank records. Accordingly, the criminal revision case is allowed and the order dated 30.09.2015 passed by the learned Judicial Magistrate (Fast Track Court), Tiruchengode, in CrI.M.P.No.3400 of 2015 in S.T.C.No.134 of 2014, is set aside. Consequently, CrI.M.P.3400/2015 stands allowed. The learned Judicial Magistrate is required to send the disputed cheque to the Forensic Department by observing necessary formalities, within 21 days and complete the case

within 12 weeks thereafter. Consequently, connected
miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Judicial Magistrate (Fast Track Court),
Tiruchengode.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No. 32203

Cr1.R.C.No.1114 of 2015 and
M.P.No.1 of 2015

LN(CO)
GN(10/08/2021)