

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.NO.4932 OF 2019

AND

CRL.MP.NO.2887 OF 2019

C.Pushpadevi

...Petitioner

.Vs.

V.Nandakumar

...Respondent

Prayer:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the Docketal Endorsement orders of the trial Court dt.15.10.2018 in CMP No.8858 of 2018 in C.C.No.365 of 2018, direct the trial Court to appoint an Advocate Commissioner to enquire and find out with the assistance of an Expert that signature in Exhibit P-1, differs from the Signatures of the Accused found in Exhibit P-5 and in the acknowledgement for service of summons, thereafter submit a report.

For Petitioner : Mr.S.R.Sundaram

For Respondent : Mr.B.Dayalan

सत्यमेव जयते
O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 45 of the Indian Evidence Act, wherein the petitioner had sought for the comparison of the signature found in the cheque [Ex.P-1] with the admitted signature in the acknowledgment card [Ex.P-5].

2.The respondent has filed a complaint against the petitioner for an offence under Section 138 of the Negotiable Instruments Act. The case was at the stage of cross examination of PW-1. The petitioner who is the accused in this case is denying the signature found in the cheque [Ex.P-1]. Hence, the

petitioner filed an application under Section 45 of the Indian Evidence Act, before the Court below to send the cheque for expert opinion to be compared with the admitted signature found in the acknowledgment card [Ex.P-5]. The Court below dismissed the application and aggrieved by the same, the present petition has been filed before this Court.

3.Heard Mr.S.R.Sundaram, learned counsel for the petitioner and Mr.B.Dayalan, learned counsel appearing on behalf of the respondent.

4.In the present case, the petitioner is denying the signature found in the cheque [Ex.P-1]. The signature found in the cheque has to be compared with some admitted signature of the petitioner and it will be safe if an expert opinion is sought for in this regard. Ultimately, the petitioner has to be given an opportunity to prove her defense that the signature found in the cheque is not her signature.

5.When it comes to comparison of the signature, it is always prudent to compare it with an admitted signature which is contemporaneous with the signature that is found in the document in question. In the present case, the safest document that can be relied upon to compare the signature will be the specimen signature that is available in the bank in which the petitioner was maintaining the account.

6.In view of the above, the order passed by the Court below dated 15.10.2018, is set aside. The Court below is directed to immediately send the disputed cheque for expert opinion to be compared with the signature that is maintained by the bank in which the petitioner is having her account. The Court below shall impose all the necessary conditions and ensure that the report is received at the earliest possible time. Thereafter, the trial shall be continued and the proceedings shall be completed within a period of four months from the date of receipt of a copy of this order.

7. This Criminal Original Petition is accordingly allowed with the above directions. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KP

To

The Judicial Magistrate,
FTC No.2, Coimbatore.

+1cc to Mr.S.R.Sundaram, Advocate, S.R.No.

+1cc to Mr.B.Dayalan, Advocate, S.R.No.

CRL.O.P.No.4932 of 2019

GSM(CO)
CS/31/03/2021



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