

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 15.03.2021****CORAM****THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

Crl.O.P No.5148 of 2021
and Crl.MP No.3273 of 2021

K.Ganesan

.. Petitioner

Vs.

R.Appusamy

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated in C.M.P.No.585 of 2021 in S.T.C.No.358 of 2017 on the file of the Judicial Magistrate Fast Track Court, Thiruchengode.

For Petitioner : Mr.M.Guruprasad

सत्यमेव जयते

ORDER**WEB COPY**

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 45 of the Indian Evidence Act to send the subject cheque for expert opinion to be compared with

Ex.P2- Cheque deposit challan.

2. The respondent has filed a complaint against the petitioner for an offence under Section 138 of the Negotiable Instruments Act. The main defence that has been taken by the petitioner is that except the signature found in the cheque, the writings that are found in the body of the cheque is not the handwriting of the petitioner and the writings that are found in the body of the cheque is similar to the writings that are found in the cheque deposit challan, which was marked as Ex.P2. According to the petitioner, a cheque that was given towards security has been misused by the respondent by filling up the same and there is no legally enforceable debt or liability against the petitioner.

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3. The petitioner in order to substantiate his defence filed an application under Section 45 of the Indian Evidence Act to send the deposited cheque for expert opinion to be compared with the hand writing found in Ex.P2- Cheque deposit challan.

The Court below dismissed this application and aggrieved by the same, the present criminal original petition has been filed before this Court.

4. This Court has carefully considered the submissions made by the learned counsel for the petitioner and also the materials available on record.

5. A careful reading of the cross examination of PW1 conducted by the petitioner shows that the petitioner has substantially established his defense. The Court below has taken the same into consideration and has held that the handwriting found in the body of the cheque may not have any relevance since Section 20 of the Negotiable Instruments Act, which deals with inchoate instrument, is made applicable even in cases pertaining to cheques. The Court below therefore found that the comparison of the hand writing found in the cheque deposit challan (Ex.P2) and the cheque (Ex.P1) need not be undertaken.

This Court does not find any ground to interfere with the order

passed by the Court below.

6. In the result, the order passed by the Court below is sustained and the Criminal original petition is dismissed. The Court below is directed to complete the proceedings in S.T.C.No.358 of 2017 within a period two months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

15.03.2021

Index : Yes/No

Internet : Yes/No

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Issue order copy on 17.03.2021

To

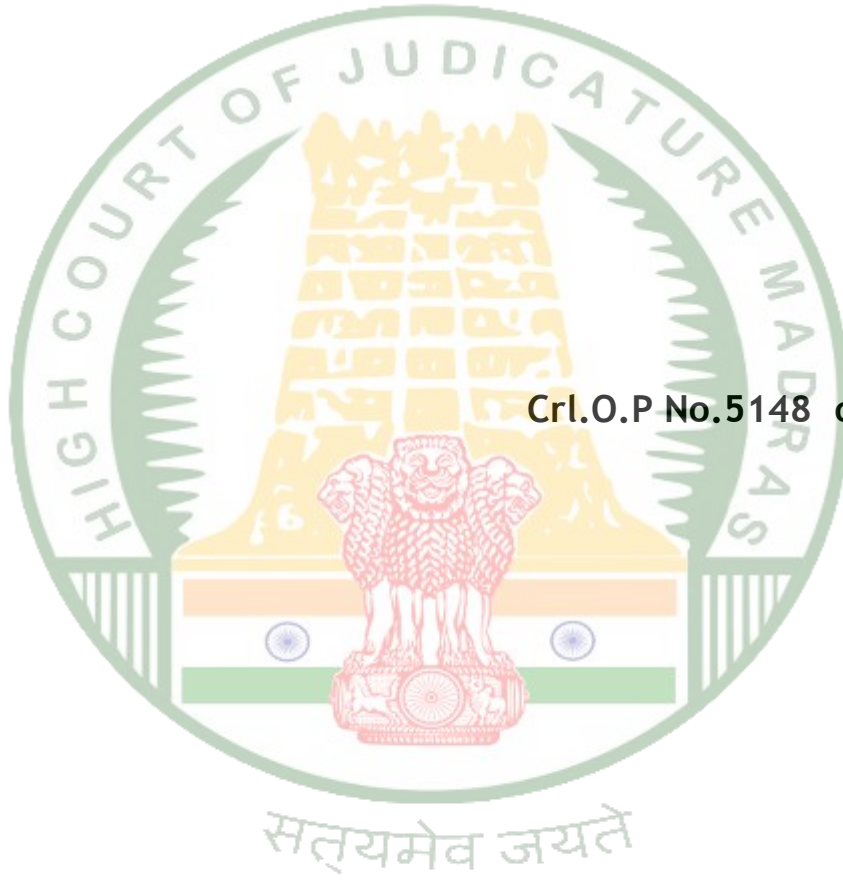
1. The Judicial Magistrate Fast Track Court, Thiruchengode

2. The Public Prosecutor,
High Court, Madras.

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N. ANAND VENKATESH, J.

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