



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.NO.801 OF 2021

S.Praveenkumar

...Petitioner

Vs.

Lenin

...Respondent

PRAYER : The Criminal Revision Petition is filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside the order in C.M.P.No.1945 of 2021, C.C.No.302 of 2018 dated 07.10.2021 on the file of the Judicial Magistrate No.I, Namakkal.

For Petitioner : M/s.Divya Priya
for Mr.P.Tamilavel

For Respondent : Mr.J.Jayan

O R D E R

This Criminal Revision has been filed against the dismissal of the petition passed by the Judicial Magistrate No.I, Namakkal in C.M.P.No.1945 of 2021, C.C.No.302 of 2018, filed under Section 45 Indian Evidence Act, seeking to send the cheque for expert opinion.

2. The petitioner is an accused in C.C.No.302 of 2018, pending trial for the offence under Section 138 of Negotiable Instruments Act. The petitioner had filed the petition under Section 45 of Indian Evidence Act, in which, it has been stated that the complainant was examined in Chief and documents have been marked on the side of the complainant. Thereafter, one Raghu, S/o., Karuppanan has been examined as defence witness and three other witnesses have been summoned as defence witnesses. The witnesses who have received the summons avoided to appear before the Court, since they have colluded with the complainant. The petitioner had further submitted that though the signature in the cheque is admitted, the other entries in the cheque were not filled by him and thereby, he had filed C.M.P.1945 of 2021 seeking to send the cheque for expert opinion to prove that the entries were not made by the petitioner/accused.



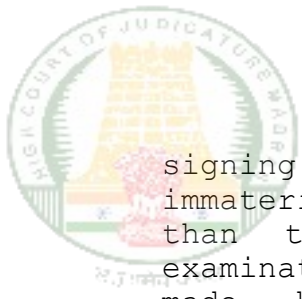
3. The respondent has filed a counter. In the counter, he had stated that the accused had not sent any reply to the legal notice, denying that the contents were not filled by him and that after cognizance, during the initial questioning and during the time of questioning under Section 313(i) Cr.P.C, he had not stated anything with regard to the filling of the contents by someone else and that the petition had been filed only to protract the trial. Further, the respondent/complainant had also stated that as per Section 20 of the N.I. Act, when the signature is admitted, it is immaterial the entries are made by someone else.

4. The Trial Court after hearing both sides, by an order dated 07.10.2021 had dismissed the petition in C.M.P.No.1945 of 2021, against which the present Revision has been filed.

5. Learned Counsel appearing for the petitioner/accused would submit, admittedly, petitioner has signed the cheque, whereas the entries in the cheque have been made by some one else. At the time of cross examination, the petitioner had put a specific question to the respondent that the signature and the entries were made by different pens and have been entered by different persons and the question was denied by the respondent/complainant and the respondent had specifically stated that the entries have made by the accused himself and thereby, it is necessary to prove that the entries were not made by the accused and the cheque has to be sent for expert opinion.

6. He would further submit that the petitioner had filed the copies of the receipts, Statement of Accounts, Offer and Joining Report, Interview Guide and Request Form and the same have to be compared with the entries made in the cheque so as to elicit that he has not filled the cheque, whereas the Trial Court, without taking into consideration that the burden is on the petitioner to rebut the statutory presumption by letting in defence evidence had dismissed the petition and thereby, he would seeks to set aside the order.

7. Per contra, the learned counsel for the respondent/complainant would submit that in this case, the petitioner/accused had admitted to the signature in the cheque, however, he had not sent any reply to the notice stating that the entries in the cheque were made by someone else and not by him. Further, at the stage of initial questioning and also at the time of questioning under Section 313(i) Cr.P.C, the petitioner/accused has not raised any objection or made any plea stating that the entries in the cheque were not made by him and that it was made by some one else. He would further submit that once the signature is admitted, Section 20 of Negotiable Instruments Act comes into play and thereby the person so



signing shall be liable upon such instrument and it is immaterial that the cheque has been filled by any person other than the drawer. Further, the complainant in his cross examination, has admitted that the entries in the cheque were made by one Venkatesh, who is the friend of the petitioner/accused and in such case there is no requirement to send the cheque for comparison of entries. Further, there is no mechanism or expertise to find out the age of ink and more over the documents sought to be compared were all xerox copies and the Trial Court had rightly rendered a finding that the comparison cannot be done on the basis of xerox copies and dismissed the same. There is no infirmity in the order.

8. In support of his contention, the learned counsel for the respondent/complainant would rely on the judgment of the Hon'ble Apex Court in the case of Bir Singh vs Mukesh Kumar reported in (2019) 4 SCC 197. He also relied on the Judgment of this Court in the case of Uthirapathy Vs Balasubramanian, dated 11.11.2019 made in Crl.R.C.No.1093 of 2019. He would submit that there is no infirmity or error in the order of the Trial Court and the Trial Court finding that the petition has been filed only to protract the trial, dismissed the same.

9. Heard the learned counsel and perused the materials available on record.

10. The claim of the petitioner/accused is that though he has signed the cheque and handed over it to the complainant/respondent, the entries in the cheque were entered by someone else and not by him and thereby, the petition had been filed seeking to send the cheque for expert opinion to compare the entries in the cheque with the entries in the following documents.

Sl. No.	Name of the Document	No. of sheets
1.	Receipt copies (Mavericks Garden Preschool) MAVGAR Education Pvt. Ltd.	5
2.	Statement of Account-Indusland Bank (Namakkal) 30-Jun-2017	6
3.	Offer and Joining Report - IDP Education India Pvt. Ltd.	9
4.	Addendum and Relieving (Exit) Interview Guide	6
5.	Request (Job) forms - Mavericks Garden preschool	5



11. Admittedly, in this case, the petitioner/accused has not sent any reply to the legal notice stating that the entries in the cheque were made by someone else, likewise, he had also not raised any such plea either at the time of initial questioning or at the time of questioning under Section 313(i) Cr.P.C and only after examining one Raghu as defence side witness, the petition had been filed seeking to send the entries in the cheque for comparison for expert opinion. Further, it is the admitted case of the respondent that the entries in the cheque were filled by one Venkatesh known to the petitioner accused.

12. The Hon'ble Apex Court in *Bir Singh vs Mukesh Kumar* (2019) 4SCC 197, has held as follows:

"32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit



of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

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36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

Further, this Court relying on the Judgment of Bir Singh cited supra, had in CrI.R.C.No.1093 of 2019 (Uthirapathi Vs V.Balasubramanian) dated 11.11.2019, has held as follows:-

"6. Per contra, the learned counsel for the respondent / complainant would submit that in the case referred to by the petitioner, the complainant had himself agreed for sending the cheque for expert opinion whereas the victims are concerned, complainant had objected for sending the cheque for expert opinion. In this case the petitioner/accused has admitted that having signed the cheque and the petitioner having accepted the signature in the cheque cannot now dispute that the cheques were filled up by some one else. As per Section 20 of the Negotiable Instrument Act the petitioner having signed the cheque is liable upon such instrument in the capacity in which he has signed the same. Further no plea had been taken by the petitioner right from the beginning that he has given a blank cheque. Further there is no mechanism or expertise to find out the the age of the ink. He further submitted that the petitioner had earlier approached this Court by filing quash petition and this Court had dismissed the petition directing the trial court to complete the trial within the specified period. Only into to protract the proceedings, the petition has been filed at the stage of questioning under Section 313(i) of Cr.P.C. In support of his contention he relied upon the judgment of this Court in 2018(3)MWN(cr.) DCC16 (Madras High Court)(Madurai Bench) in the case of T.Mohanraj vs A.Britto Joy, 2018(3)MWN(Cr.)DCC40, wherein it is held as follows:

"Evidence Act, 1872, Section 45
Negotiable Instruments Act 1881, Section
138 and 139 Petition seeking Expert Opinion
as to age of ink used in signing cheque
Dismissal of ? Legality Age of Ink
Ascertainment of No facility or mechanism
or expert available to find out the age of



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the ink Decisions in Nallathambi and Samsudeen relied upon Prayer unworkable Case of complainant that cheque signed and issued and issued in year 1992 Defence taken by Accused/Petitioner that cheque filled up and misused in year 2011 In absence of any facility to ascertain age of ink, petitioner can rebut presumption by proving his defense in any other method in accordance with law Petitioner can also examine Bank Officials to prove said fact.

He also relied on the judgement of this Court in the case of (Madras High Court)(Madurai Bench) in the case of C.Kannan vs V.Murugan, where in it is held as follows:

"Evidence Act 1872, Section 45 & 73 Negotiable Instruments Act, 1881 Section 138, Petition seeking Expert Opinion, Dismissal Legality, Accused seeking to send cheque to hand writing expert to compare signature with other writings found in cheque and to find out whether same written by accused No objection raised regarding signature in particular ? Court under Section 73 empowered to peruse and compare dispute document with admitted document PW1 already recalled for further cross examination three times at instance of accused petitioner trying to drag on proceedings Impugned order of dismissal upheld Revision petition dismissed."

He also relied on the Judgment of the Hon'ble Apex Court in the case of Bir Singh vs Mukesh Kumar in 2019(1)MWN(Cr.) DCC164 (SC). The relevant para is extracted herein under:

"Negotiable Instruments Act, 1881, Sections 20, 87 and 139 Blank/unfilled signed cheques Filling up of by any person other than drawer does not invalidate cheque Subsequent filling up of unfilled signed cheques not an alteration.

Para 37) A meaning reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20.87 and 139 makes it amply clear that a person who signs a cheques and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the



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cheques had been issued for payment of a debt or in discharge of a liability . It is immaterial that the cheques may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of section 138 would be attracted .

13. In this case, as stated above, this Court is of the opinion that the petitioner has not made out any case for sending the cheque for expert opinion. This Court is of the further opinion that the petition has been filed at the fag end only with an oblique motive to protract the proceedings. I do not find any infirmity or error in the order passed by the Trial Judge, the revision lacks merits and thereby stands dismissed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Namakkal.

2.The Chief Judicial Magistrate
Namakkal.

+1cc to Mr.W.Camyles Gandhi, Advocate SR.No.69000

Cr1.R.C.No.801 of 2021

SSI (CO)
RVM(12/01/2022)