

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.27520 of 2018
and
Cr1. M.P. No. 15871 of 2018

R.S.Saravanan ... Petitioner
Vs.
G.Muraliprabhu ... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 14.09.2018 passed in C.M.P. No. 3394 of 2018 in S.T.C. No. 1231 of 2017 on the file Judicial Magistrate II, Salem.

For Petitioner : Mr. S.Kaithamalai Kumaran
For Respondent : M/s. K.V.Sridharan
Jayasri Baskar

ORDER

This petition has been filed challenging the order passed by the Court below in CMP.No.3394 of 2018 in STC. No.1231 of 2017, dated 14.09.2018, wherein the petitioner has sought for sending the disputed cheque for expert opinion and the said petition was dismissed by the Court below.

2. The respondent has filed a complaint against the petitioner for offence under Section 138 of Negotiable Instruments Act. The defense taken by the petitioner is that he has not issued the cheque for a sum of Rs.25,00,000/- and the handwriting found in the body of the cheque is not the handwriting of the petitioner. According to the petitioner, the respondent has misused the cheque of the petitioner in connivance with the brother of the petitioner.

3. The petitioner filed an application before the Court below to send the disputed cheque for expert opinion in order to find out as to whether,

- a. the handwriting found in the body of the cheque is the handwriting of the petitioner; and
- b. the age of the ink that was used for writing the particulars in the body of the cheque.

4. The Court below dismissed the application on the ground that the petitioner has not filed any contemporaneous documents in order to verify the handwriting as found in the cheque and there is no mechanism to find out the age of the ink with which the particulars were filled up in the cheque. Aggrieved by the same, the present petition has been filed before this Court.

5. Heard Mr.S.Kaithamalai Kumaram, learned counsel for the petitioner and Mr.K.V.Sridhar, learned counsel for the respondent.

6. There is no dispute with regard to the fact that the signature found in the cheque is that of the petitioner. The petitioner is disputing the handwriting found in the body of the cheque. According to the petitioner, the respondent has taken a specific stand that the cheque was filled up by the petitioner and given to him. This stand taken by the respondent can be contradicted only if an opinion is sought for regarding the handwriting found in the body of the cheque since the petitioner is disputing the same.

7. There are basically two expert opinions that were sought for by the petitioner. One of the opinion is to find out the age of the ink that was used to fill up the body of the cheque. This Court has already held that there is no mechanism available to ascertain the age of the ink. Useful reference can be made to the judgment of this Court in T.Mohanraj Vs.A.Britto Joy 2018 (3) Madras Weekly Notes CrI. (DCC) 16. Therefore, there is no question of sending the disputed cheque to an expert to ascertain the age of the ink.

8. The next issue that arises for consideration is as to whether the disputed cheque should be sent to ascertain the handwriting found in the body of the cheque. The petitioner has taken a specific stand that the signed cheque has been misused by the respondent. Even if it is assumed that the respondent has filled up the body of the cheque containing the amount and the date of the cheque, that is not completely barred and this Court has consistently held that Section 20 of the Negotiable Instruments Act, which deals with inchoate stamped instruments will equally apply to cheque also. Useful reference can be made to the judgment of this Court in Ayyanar Vs. P.T.Tamilselvi, reported in 2019 (2) LW CrI. 156.

9. In view of the above, even if it is found that the handwriting contained in the cheque is not the handwriting of the petitioner, that does not improve the case of the petitioner in any way. Ultimately, the petitioner can always rebut the presumption under Section 139 of Negotiable Instruments Act by cross examining the respondent and by examining the witnesses on

the side of the defense. If the petitioner is able to establish the fact that there was no legally enforceable debt or liability on the part of the petitioner, the handwriting found in the cheque will become irrelevant. Therefore, no useful purpose is going to be served by sending the cheque to get the expert opinion with regard to that handwriting found in the body of the cheque. In fact, it will only prolong the proceedings.

10. In view of the above, this Court is not inclined to interfere with the order passed by the Court below and accordingly, this Criminal Original Petition is dismissed.

11. It is left open to the petitioner to raise all the grounds before the Court below and the Court below shall consider the same on its own merits and in accordance with law without being influenced by the order passed by this Court. The Court below is directed to complete the proceedings in STC No.1231 of 2017 within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

The Judicial Magistrate II, Salem

+1 cc to M/s.S.Kaithamalai kumaran, Advocate Sr.No. 4484

+1 cc to M/s.K.V.Sridharan, Advocate Sr.No. 4610

CrI.O.P.No.27520 of 2018

NRL (CO)

RMP (04/03/2021)

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