



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

WEB COPY

CrI.R.C(MD)No.395 of 2021

J.Thayammal

... Petitioner/Petitioner/Sole Accused
Vs.

T.Ragupathi Srinivasan

...Respondent/respondents/Complainant

Prayer : This Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in Cr.M.P.No.605 of 2020 in C.C.No.109 of 2018 on the file of the Fast Track Court (Judicial Magistrate Level), Kovilpatti, Thoothukudi District and set aside the order, dated 05.02.2021.

For Petitioner
For Respondent

: Mr.S.Saravanan
: Mr.S.Vidhya Sagar

O R D E R

This Criminal Revision Case is filed against the order, dated 05.02.2021 passed in Cr.M.P.No.605 of 2020 in C.C.No.109 of 2018 by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Kovilpatti, Thoothukudi District.

2.The respondent herein as complainant filed a private complaint under Section 138 of Negotiable Instruments Act against the petitioner/accused alleging that on 27.07.2016, the petitioner borrowed a sum of Rs.7,00,000/- and issued a posted dated cheque for Rs.7,00,000/- and when the cheque was presented for collection on 27.06.2017, it was returned with endorsement that ''Funds Insufficient'' and in this regard, the respondent/complainant issued a legal notice on 24.07.2017, which was returned as ''left'' and the notice sent to the working address of the petitioner/accused was also returned as ''Not Claimed.''. .

3.The learned Fast Track Court (Judicial Magistrate Level), Kovilpatti, Thoothukudi District, take the private complaint filed by the complainant on its file and assigned CC No.109 of 2018. Pending trial, the petitioner filed Cr.M.P.No.605 of 2020 under Sections 45 and 73 of the Indian Evidence Act 1872 praying to send the disputed cheque to the Handwriting expert for comparing the signature of the petitioner. The learned Judicial Magistrate, Kovilpatti dismissed said petition, on 05.02.2021 on the ground that the disputed cheque was not presented and marked. Aggrieved by the



said order, the petitioner is before this court.

4. Heard both sides and perused the materials available on record.

5. The learned counsel appearing for the petitioner/accused submitted that no opportunity was given to the petitioner to establish her defense, since the signature found in the disputed cheque is forged and that the burden is cast upon the petitioner under Section 139 of the Negotiable Instruments Act and the same cannot be shifted without sending the cheque for expert opinion and prays for allowing the criminal revision.

6. On the other hand, the learned counsel appearing for the respondent/complainant submitted that the trial court rightly dismissed the petition filed by the petitioner seeking to send the disputed cheque to the handwriting expert and prays for dismissal of the criminal revision.

7. It is seen from the impugned order, the trial court dismissed the petition filed by the petitioner stating that he filed the petition to send for the disputed cheque to the handwriting expert before taking the evidence and the admitted signature was not filed along with the petition.

8. It is further seen that pending petition filed seeking to send the disputed cheque to the handwriting expert, the original cheque of the case was not marked. Hence, this court is of the considered view that at the time of filing CrI.MP No.605 of 2020, the disputed cheque was not marked as Exhibit before the trial court.

9. Considering the above aspects, the trial court has rightly dismissed the petition filed by the petitioner seeking to send the disputed cheque to the handwriting expert for comparing the signature of the petitioner.

10. In view of that, the criminal revision fails and the same is dismissed. However, liberty is granted to the petitioner to file a petition before the trial Court for getting appropriate relief, in the manner known to law.

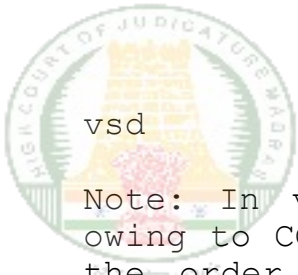
Sd/-

Assistant Registrar (Cs-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Kovilpatti,
Thoothukudi District.

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-26104[F] dated
12/08/2021)

Cr1.R.C (MD) No.395 of 2021
11.08.2021

ES (CO)
KB (23.09.2021) 3P 3C