



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.09.2021
PRONOUNCED ON: 19.11.2021
CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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CRL.R.C. (MD) .No.691 of 2016
and
Cr1.M.P. (MD)No.9677 of 2016

M.Arumugham : Petitioner/Petitioner/Accused

Vs.

V.Jesudoss : Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 (1) r/w 401 of Cr.P.C, against the order dated 23.05.2016, passed in Cr.M.P.No.3784 of 2016, in S.T.C.No.836 of 2012, by the Judicial Magistrate No.1, Tiruchirappalli

For Petitioner : Mr.Vinoharan
for Mr.G.Prabhu Rajadurai

For Respondent : Mr.A.L.Kannan

ORDER

This Criminal Revision Petition is directed against the order passed in Cr.M.P.No.3784 of 2016 in S.T.C.No.836 of 2012, dated 23.05.2016, on the file of the Court of Judicial Magistrate No.I, Tiruchirappalli, filed under Section 45 of the Indian Evidence Act to send the disputed cheque to the Forensic Science Department for expert opinion.

2. The revision petitioner is the accused in a case filed under Section 138 of the Negotiable Instruments Act in S.T.C.No.836 of 2012, pending on the file of the Court of Judicial Magistrate No.I, Trichirappalli. Pending trial, the petitioner, invoking Section 45 of the Indian Evidence Act, has filed the above petition to send the cheque in dispute to compare the signature found in the cheque with his admitted signatures. The learned Judicial Magistrate, after enquiry, has passed the impugned order, dated 23.05.2016, dismissing the said petition. Aggrieved by the said order of dismissal, the accused has come forward with the present Criminal Revision Petition.

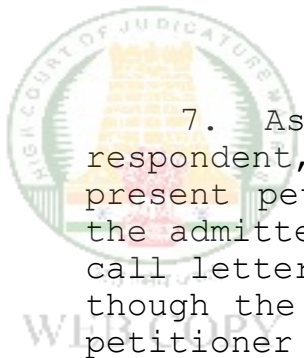


3. The case of the revision petitioner/accused is that he neither borrowed any amount nor executed any promissory note as alleged in the complaint, that the signature obtained in the blank promissory note was well before the year 1994 and the complainant has fabricated the above said empty promissory note which was given to him in the year 1994, that the cheque mentioned in the complaint has not been issued by the Bank to him and he has not signed the cheque at any point of time and that therefore, it has become just and necessary to send the said cheque to handwriting expert for comparing the disputed signature found in the cheque along with his admitted signatures available in the documents produced along with the petition. The petitioner has also filed two documents, which are the attested copies of his Motor Insurance NCB details call letter, dated 30.04.2012 and the renewal notice dated 28.05.2012.

4. The defence of the respondent/complainant is that the petitioner has admitted the signature in the promissory note as well as in the cheque and as such, he has no right to seek the present reliefs, that even according to the accused, he has sent a notice seeking return of the alleged records in the custody of the respondent, in which the present cheque was not referred, that the petitioner has filed another application for the identical relief in Cr.M.P.No.4128 of 2014 and after enquiry, the same was dismissed by the learned Judicial Magistrate and that the above petition came to be filed to drag on the proceedings.

5. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and perused the materials placed on record.

6. Admittedly, the respondent has filed a private complaint against the petitioner/accused under Section 138 of the Negotiable Instruments Act in the year 2012 itself and the same is pending on the file of the Court of the Judicial Magistrate No.I, Trichirappalli for more than 9 years. It is not in dispute that the petitioner has previously filed a petition in Cr.M.P.No.4128 of 2014, under Section 45 of the Indian Evidence Act seeking two prayers and the first one is to fix the age of the signature of the petitioner in the promissory note and the second prayer is to compare the signature found in the dispute cheque with his admitted signature found in the acknowledgment card and to get expert opinion. The learned Judicial Magistrate, after enquiry, has dismissed the said petition in Cr.M.P.NO.4128 of 2014, vide order dated 07.04.2015. The learned Judicial Magistrate, in the said order dated 07.04.2015, has observed that the acknowledgment card allegedly containing the admitted signature of the petitioner is dated 27.06.2012 and since the cheque is dated 18.06.2012, the same cannot be used for comparison and that the petitioner has not produced any document for the period prior to 18.06.2012.



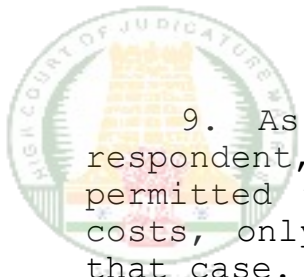
7. As rightly contended by the learned Counsel for the respondent, the petitioner has claimed the same relief in the present petition seeking comparison of the disputed signature with the admitted signatures available in the Motor Insurance NCB details call letter and the renewal notice. It is pertinent to mention that though the said documents were dated 30.04.2012 and 28.05.2012, the petitioner has not offered any reason or explanation as to why the said documents were not produced earlier, when the petition in Cr.M.P.No.4128 of 2014 was pending on the file of the trial Court. Moreover, it is not the case of the petitioner that he had taken steps to sent for the specimen signatures available with the Bank authorities at that point of time.

8. As already pointed out, the earlier petition was dismissed on 07.04.2015 and the present petition was filed on 27.04.2015. At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in **G.Someshwar Rao Vs. Samineni Nageshwar Rao and another** reported in **(2009)14 SCC 677** relied on by the learned Counsel for the petitioner and the relevant paragraphs of the said judgment are as follows:

"11. The right of an accused under sub-section (2) of Section 243 of the Code of Criminal Procedure is, thus, not an absolute one. He cannot take recourse thereto for the purpose of delaying the proceedings. An application filed by an accused must be for subserving the cause of justice and not for subverting the same.

14. Evidently, the appellant had filed two successive applications; the second application was, thus, not maintainable. This itself goes to show that he intended to delay the disposal of the matter. He could have examined his own expert. He may still do so for which, we are sure, the court shall grant him reasonable opportunity. Even now, the court will be entitled to exercise its jurisdiction, if it so thinks fit and proper in terms of Section 73 of the Indian Evidence Act.

15. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice would be subserved if an opportunity is granted to the appellant to examine an expert at his own costs. If he requisitions the services of an expert, the learned Judge would grant him an opportunity to examine the disputed documents, submit a report and examine himself as a witness in the case preferably on the same date. Such a step, however, must be taken by the appellant within six weeks from date.



9. As rightly pointed out by the learned Counsel for the respondent, in the above decision, the Honourable Supreme Court had permitted the appellant therein to examine the expert at his own costs, only on considering the peculiar facts and circumstances of that case.

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10. As already pointed out, in the case is pending from 2012 onwards, the petitioner has filed two successive applications for the very same relief and that by itself would go to show his intention to delay the disposal of the case. On considering the entire facts and circumstances, this Court is of the considered view that the above petition came to be filed only to drag on the proceedings and as such, the decision of the learned Judicial Magistrate, in dismissing the petition, cannot be found fault with. Consequently, this Court concludes that the Criminal Revision Petition is devoid of merits and the same is liable to be dismissed. Considering the fact that the case is pending from the year 2012 onwards, this Court is also of the view that necessary directions should be issued for earlier disposal of the case.

11. In the result, this Criminal Revision Petition is dismissed, confirming the order passed in Cr.M.P.No.3784 of 2016 in S.T.C.No.836 of 2012, dated 23.05.2016, on the file of the Court of Judicial Magistrate No.I, Tiruchirappalli. The learned Judicial Magistrate No.I, Tiruchirappalli is also directed to dispose of the case in S.T.C.No.836 of 2012, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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

1.The Judicial Magistrate No.I, Tiruchirappalli

2.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-35375[F] dated
22/11/2021)

CRL.R.C. (MD) .No.691 of 2016
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MGJ(09.12.2021) 5P 5C