



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.17501 of 2018

and

Crl.MP(MD)Nos.8382 and 8383 of 2018

WEB COPY

Amutha	:	Petitioner/Appellant/ Accused
	Vs.	
Ashok Kumar	:	Respondent/Respondent/ Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to set aside the order made in C.R.P No.17 of 2015, dated 18.03.2016, by the Principal Sessions Judge, Namakkal, by confirming the order of the learned Judicial Magistrate No.II, Namakkal, dated 21.07.2015 made in C.M.P No.9086 of 2015 in CC No.81 of 2013 (Now pending before the Judicial Magistrate, Musiri, Trichy District, in STC No.187 of 2017).

For Petitioner	:	Mr.T.Vadivelan
For Respondent	:	Mrs.Jeyavel

O R D E R

This petition has been filed by the petitioner seeking to set aside the order made in C.R.P No.17 of 2015, dated 18.03.2016, by the Principal Sessions Judge, Namakkal, by confirming the order of the learned Judicial Magistrate No.II, Namakkal, dated 21.07.2015 made in C.M.P No.9086 of 2015 in CC No.81 of 2013 (Now pending before the Judicial Magistrate, Musiri, Trichy District, in STC No.187 of 2017).

2.The petitioner is facing charge under section 138 of the Negotiable Instruments Act and the CC is of the year 2013. During the pendency of the above said proceedings, this petitioner filed a petition under section 45 of the Indian Evidence Act seeking an order to send the disputed cheque for handwriting expert for the purpose of comparing his signature with that of the available records, that is the signature found in the opening form of the account in ICICI bank, Sevaipetti branch. That petition came to be dismissed by the trial court on a single ground that the related documents for the purpose of comparison are not available in the file. So challenging the same, this petition came to be filed.

3.Heard both sides.

4.I am unable to agree with the stand that has been taken by the trial court. The petitioner must be given proper opportunity to

<https://hcservices.ecourts.gov.in/hcservices/>



send for the documents, which are available in ICICI Bank, Shevapettai branch for the purpose of sending the document to expert opinion for comparison. Simply because the petitioner has not resorted and not prayed for the relief in the petition, on technical ground, the trial court ought not to have dismissed the petition, instead ought to have directed the petitioner to take steps to send for the relevant documents.

5.This is the simple issue, for which the trial is pending for more than 6 six years without any progress. So, I am of the considered view that this petition can be allowed.

6.Accordingly, this petition is **allowed** and the impugned order of the trial court is set aside. The matter is **remitted back** to the trial court for considering the matter afresh. The petitioner is directed to take steps to send for the documents, which contains his signature for the purpose of examination. The petitioner shall file proper application within a period of 15 days from the date of receipt of a copy of this order. On such petition is being filed, the trial court shall consider the same for the purpose of sending the documents to the expert opinion. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// 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 :

1. The Principal Sessions Judge, Namakkal.
2. The Judicial Magistrate No.II, Namakkal.
3. The Judicial Magistrate, Musiri, Trichy District.

+1 CC to M/s.T.VADIVELAN, Advocate (SR-36666[F] dated 01/12/2021)

Crl.OP (MD) No.17501 of 2018

30.11.2021