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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.01.2021

Pronounced on : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).Nos. 70 to 72 of 2017

and

CRL.MP(MD).Nos. 630 to 632 of 2017

S. Selvi

...Petitioner / accused
in all cases

Vs.

R. Subramani

...Respondent / complainant in
Crl.R.C(MD).No. 70 of 2017

V. Balasubramanian

... Respondent / complainant in
Crl.R.C(MD).No. 71 of 2017

K.V.A. Sivaraman

... Respondent / complainant in
Crl.R.C(MD).No. 72 of 2017

COMMON PRAYER:- Criminal Revision Case filed under Section 397 and 401 Cr.P.C., against the order, dated 07.10.2016 made in CMP.Nos.1758, 1759 and 2561 of 2016 in C.C.Nos.57, 72 and 91 of 2016 on the file of the Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur.

For petitioner in all cases : Mr.M.V. Venkateshan
for S. Vellaichamy

For respondent in all cases : Mr. V. Perumal

COMMON ORDER

These revisions are directed against the impugned orders passed in CMP.Nos.1758, 1759 and 2561 of 2016 in C.C.Nos.57, 72 and 91 of 2016 by learned Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur, filed under Section 243(2) Cr.P.C r/w. Section 45 of the Indian Evidence Act, 1872 to send the disputed cheques to the Forensic Science Department for expert opinion.

2. The petitioner is an accused in the cases filed under Section 138 of the Negotiable Instruments Act before the Trial Court. Pending trial, the petitioner by invoking Section 45 of the Indian Evidence Act, filed petitions to send the disputed cheques to the Forensic Science Department for comparison of the petitioner



signature and the handwritten matters contained in the cheques and for an expert opinion. The trial Court, after enquiry, has passed the impugned orders dismissing the said petitions. Aggrieved by the said orders, the petitioner has come forward with the present revisions.

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3. At the outset, the learned counsel appearing for the petitioner would submit that the trial Court has failed to understand the very prayer sought for by the petitioner.

4. A cursory perusal of the petitions filed under Section 45 of the Indian Evidence Act, 1872 by the petitioner would only reveal that the petitioner herself is not clear about the relief claimed. No doubt, the respondent has filed the counter statement, as if the petitioner has come forward with the above petitions to send the disputed cheques for comparing the signatures found in the cheques. The trial Court, on its part, has interpreted the prayer of the petitioner in such a way that he wanted to send the cheques for ascertaining the age of the signatures and the age of the writings in the cheque.

5. After hearing the learned counsels appearing for the petitioner and the respondent, this Court by putting a question to the counsel for the petitioner, to confirm my understanding of the petitioner's prayer and at last came to the light that the petitioner in order to prove that the handwritings found in the cheque are not that of her handwritings wanted to send the disputed cheques for comparing the handwritings found in the cheques with her admitted handwritings. Hence, it is clear that the petitioner has not sought for any relief with respect to her signature found in the disputed cheques and according to her, the dispute is only with regard to the handwritten matters found in the cheques.

6. The learned Judicial Magistrate by referring to Section 20 of the Negotiable Instruments Act, has observed that Negotiable Instruments Act permits the holder of the cheque either by himself or through any third party to fill up the blank cheques. It is necessary to refer Section 20 of the Negotiable Instruments Act hereunder for better appreciation;

"Inchoate stamped instruments : Where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument in the



capacity in which he signed the same, to nay holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount instead by him to be paid to thereunder."

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7. As per Section 20 of the Negotiable Instruments Act, the holder in the due Course has every authority to complete the stamped instruments i.e., blank pronote and bill of exchange, delivered to him after properly signing therein by the maker of the instruments and as such Section 20 of the Negotiable Instruments Act, will have no any application to the blank cheques issued after signing by the drawer. But, at the same time, there is no law which mandates that the cheque shall be filled up by the drawer himself. Similarly, if a drawer of a cheque gives authority to the payee or holder in due course to fill up the cheque signed by him, then the payee or holder in due course can very well fill up the blank cheque by themselves or through a stranger / third party, as there is no bar for the drawer of the cheque to give authority to the third person to fill up the cheque signed by him for the purpose of negotiating the same.

8. In the present case, according to the petitioner, she has not written the contents of the cheques. As already pointed out, since it is not mandatory for the drawer to fill up the entire instrument by himself, no useful purpose would be served if the disputed cheques are sent for expert opinion. Even assuming that the expert gives his opinion that the handwritings found in the cheques are not that of the petitioner's handwriting, that by itself would not advance her case further.

9. Admittedly, all the complaints filed under Section 138 of the Negotiable Instruments Act are pending for more than six years. It is evident from the records that though the complainants were examined in chief through proof affidavit in 2014 in two cases and 2015 in one case, they are yet to be cross examined by the petitioner. As rightly contended by the learned counsel for the respondent, the petitioner has not specifically disputed her signature found in the cheques in question. Simply because there is some difference in the handwritings found in the cheques, that cannot be a ground to file the above applications and that too belatedly. As rightly argued by the learned counsel for the respondent, the above petitions came to be filed with an intention to prolong and procrastinate the proceedings.

10. Considering the above, this Court decides that the above revisions are devoid of merits and the same are liable to be dismissed. Accordingly, the Criminal Revision Cases are dismissed. The learned Judicial Magistrate is directed to dispose of the above cases within a period of four months from the date of receipt of a



copy of this order and both the parties are directed to extend their fullest co-operation for the disposal of the cases within the time stipulated. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

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 @ Magistrial Level, Karur.

+1 CC to Mr.M/.V.VENKATASESHAN, Advocate (SR-3655[F] dated 08/02/2021)

+1 CC to Mr.V.PERUMAL, Advocate (SR-3697[F] dated 08/02/2021)

CRL.RC(MD).Nos. 70 to 72 of 2017 and
CRL.MP(MD).Nos. 630 to 632 of 2017

05.02.2021

(SVM)

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