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Crl.R.C.No.386 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

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1. M/s.Kamil Leather Products,
Represented by its partner Thanveer Almas,
S/o, P.K.Khaleelur Rahman,
Footwear Division,
No.2, Mohd.Pura Mosque, 3rd Street,
Ambur, Vellore District.

2. K.Thanveer Almas
Partner, M/s. Kamil Leather Products,
S/o, P.K.Khaleelur Rahman,
No.2, Mohd.Pura Mosque, 3rd Street,
Ambur, Vellore District.

... Petitioners

Vs.

M/s.Sri Narayana Traders,
Rep. By its Managing Partner,
Ramesh Babu @ Ramesh Kumar,
No.14, OV Road,
Near Adhilakshmi Traders,
Oil Shop Bazaar, Ambur,
Vellore District.

... Respondent



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Prayer:

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Criminal Revision Petition filed under Section 397 & 401 of Cr.P.C.,
to set aside the order in C.M.P.No.4374 of 2019 in C.C.No.96 of 2011 dated
27.01.2020 on the file of the Judicial Magistrate, Gudiyatham.

For Petitioners: Mr.Avinash Wadhwani
for Mr.V.Raghavachari

For Respondent : Proof of service not filed on respondent
Notice sent and service awaited

ORDER

This Criminal Revision Case has been filed against the order dated
27.01.2020 passed in C.M.P.No.4374 of 2019 in C.C.No.96 of 2011 on the
file of the Judicial Magistrate, Gudiyatham.

2. Petitioners are accused. Respondent is the complainant. The
respondent filed the petition under Section 138 of the Negotiable Instruments
Act in C.C.No.96 of 2011 on the file of the Judicial Magistrate, Gudiyatham.
Pending the Calendar Case, the accused has filed the petition in



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C.M.P.No.4374 of 2019 in C.C.No.96 of 2011, under Section 45 of the Indian Evidence Act to send the cheque for getting expert opinion. The said petition was dismissed by the learned Magistrate. Aggrieved by the same, the petitioners have filed the present Criminal Revision Case.

3. Though this Court ordered notice and private notice, vide order dated 13.03.2020, no proof of service has been filed by the petitioners so far. From the endorsement with regard to Court notice, it is seen that the service is awaited from the year 2020. Since the Calendar Case is of the year 2011 and the Criminal Revision Case is pending from 2020, this Court is inclined to decide the matter on merits on hearing the arguments of the learned counsel for the petitioners.

4. Learned counsel for the petitioners would submit that the petitioners stoutly disputed the issuance of cheque, liability and also the signature. They sent reply to the statutory notice, in which itself, they have denied the execution of cheque and also the signature. Subsequently, the petitioners filed the petition in C.M.P.No.4374 of 2019 in C.C.No.96 of 2011, under



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Section 45 of the Indian Evidence Act to send the cheque for getting expert opinion. The learned Magistrate failed to consider the fact that since the petitioners disputed the signatures and in order to establish that the signatures found in the disputed cheque is not that of the petitioners, dismissed the petition filed by the petitioners. Hence the order of the learned Magistrate is liable to be set aside

5. Heard the learned counsel for the petitioners and perused the materials available on record.

6. Admittedly, the respondent is the complainant, who has filed the compliant for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.96 of 2011. The learned counsel for the petitioners submitted that prior to the complaint, ie., in the reply to the statutory notice itself, they denied the signatures. The complaint has been filed in the year 2011 and the same was pending from 2011 to 2019. The matter was pending for more than eight years and after completing the evidence of the respondent/complainant and completion of proceedings under Section 313 Cr.P.C., when the matter



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was listed for defence side evidence, at that time, the petitioners filed the petition in C.M.P.No.4374 of 2019 in C.C.No.96 of 2011, under Section 45 of the Indian Evidence Act to send the cheque for getting expert opinion. It shows that the petitioners have filed the miscellaneous petition only to protract the case. If at all the petitioners want to get expert opinion, they ought to have filed this petition much earlier, soon after receiving the summons or atleast before the commencement of trial or at the time of proceedings under Section 313 Cr.P.C., The petitioners have not given any valid reasons as to why they have not filed the petition under Section 45 of the Indian Evidence Act at the earliest point of time.

7. In view of the above reasonings, the impugned order passed by the learned Magistrate does not require any interference. However, the petitioners are at liberty to work out their remedy and take the defence before the learned Magistrate by making request to compare the signatures with the disputed signatures, if the petitioners are able to produce any admitted signatures in the Court by invoking under Section 73 of the Indian Evidence Act. The other option for the petitioners is that they can summon the Bank



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Manager, who has the accounts of the petitioners and he can compare the disputed signatures with the specimen signatures maintained by the Bank.

8. With the abovesaid direction and liberty, the Criminal Revision Case is dismissed. It is made clear that the petitioners have to exercise their remedy immediately without any further delay. The learned Judicial Magistrate, Gudiyatham is directed to give liberty to the petitioners to compare the signatures and at any cost, the learned Magistrate is directed to dispose of the case in C.C.No.96 of 2011 within a period of two months from the date of receipt of copy of this order.

21.12.2022

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Index:yes/No
Internet:yes/No

To

The Judicial Magistrate, Gudiyatham.



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P.VELMURUGAN, J.

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