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CrI.RC.No.1030 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1030 of 2020

and

CrI.M.P.No.7168 of 2020

Kousalya.K

Represented by Power Agent K.Srinivasa Rao

... Petitioner

Vs.

K.Perumal

... Respondent

**Prayer:** Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the order of the learned XX Metropolitan Magistrate at Chennai dated 26.02.2019 in CrI.M.P.No.4591 of 2018 in C.C.No.4635 of 2016.

For Petitioner : Ms.Y. Kavitha for  
M/s.Giridhar and Sai

For Respondent : Mr.R.Chakkaravarthy

**ORDER**

This Criminal Revision Case has been filed seeking to set aside the order of the learned XX Metropolitan Magistrate, Chennai, in CrI.M.P.No.4591 of 2018 in C.C.No.4635 of 2016 dated 26.02.2019.

2. The petitioner is complainant and the respondent is accused. The petitioner filed a private complaint before the XX Metropolitan Magistrate, Chennai, against the respondent herein for the offence under Section 138 of Negotiable Instruments Act. The same was taken on file in C.C.No.4635 of 2016 and during pendency of the same, the respondent/accused filed a petition in CrI.M.P.No.4591 of 2018 invoking Section 45 of Indian Evidence Act seeking to send the disputed pro-note which was filed by the petitioner/complainant along with the complaint, for expert opinion and the same was allowed by order dated 26.02.2019. Aggrieved over the same, the present revision has been filed by the complainant before this Court.

3.The learned counsel for the petitioner / complainant would submit that the respondent has admitted the signature found in the cheque. Once the signature found in the cheque is admitted, there is a statutory presumption under Section 139 of Negotiable Instruments Act that the cheque was issued



towards discharge of legally enforceable debt and it is for the accused to rebut the presumption. She would further submit that the pro-note was filed before the Court only as a supporting document and therefore, there is no need to send the same to the Forensic Department for getting expert opinion as the respondent/accused himself admitted the signature found in the cheque is that of him. Further, Section 73 of Indian Evidence Act has given the power to the Magistrate to compare the disputed signature with the admitted signature and hence, there is no need to send the promissory note to the Forensic Department for getting expert opinion. Eventhough the respondent/accused admitted the signature in the cheque, only inorder to protract the trial, he filed the petition before the trial Court invoking Section 45 of Indian Evidence Act and unfortunately, the learned Magistrate without invoking the power under Section 73 of Indian Evidence Act, allowed the petition which warrants interference.

4. The learned counsel for the respondent/accused would submit that the respondent/accused never issued any promissory note to the petitioner/complainant. It is not the case of the petitioner/complainant that the respondent/accused borrowed money and towards the repayment of the



same, the cheque was issued. The complaint has been filed based on the cheque alleged to have issued on the basis of the promissory note. Now the very same promissory note is disputed and the borrowal of money is also disputed. Whether the cheque was issued towards the discharge of legally enforceable debt or not that can be decided only based on the proof of the promissory note. Therefore, the promissory note has got to be testified for which, it has to be sent to Forensic Department for getting expert opinion and the learned Magistrate rightly allowed the petition and there is no reason to entertain the revision.

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

6. Admittedly, the petitioner is the complainant and the respondent is the accused and in the complaint itself, the petitioner/complainant has annexed the disputed promissory note with the list of documents. According to the respondent/accused, the promissory note was not issued by him and the signature found in the promissory note is not that of him.

7. According to the petitioner/complainant, the promissory note was produced before the Court only as a supporting document.



8. Once the petitioner/complainant admits that the promissory note was filed as a supporting document and when the respondent/accused denies the signature and disputed the execution of pro-note, in order to decide whether the cheque was issued towards discharge of legally enforceable debt or not, the promissory note has to be necessarily testified. Therefore, sending the promissory note which was annexed with the complaint by the petitioner/complainant, for getting expert opinion from the Forensic Department under Section 45 of Indian Evidence Act, would not anyway prejudice the petitioner/complainant. Though the learned counsel for the petitioner/complainant submitted that the learned Magistrate has got every power under Section 73 of Indian Evidence Act to compare the disputed signature with the admitted one, it is the discretionary power of the Magistrate to decide whether expert opinion is necessary or not. If the Magistrate feels that further expert opinion is necessary, then the Magistrate can seek for expert opinion and one cannot insist the Magistrate to invoke Section 73 of Indian Evidence Act and to sit in the Arm Chair of the Expert and to give opinion, as a matter of right. Under these circumstances, this Court does not find any perversity in the order passed by the learned Magistrate.



9. Accordingly, this Criminal Revision Case is dismissed.

Consequently, connected Miscellaneous Petition is closed.

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To  
XX Metropolitan Magistrate  
Chennai

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**P.VELMURUGAN,J.**

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