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Crl.O.P.No.16427 of 2021
and Crl.M.P.No.8965 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.16427 of 2021
and Crl.M.P.No.8965 of 2021

N.Esmail

...

Petitioner

versus

J.Thirumal

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.1958 of 2019 in S.T.C.No.356 of 2018 dated 27.04.2021 by the learned Judicial Magistrate, Harur.

For Petitioner : Mr.V.Vijayakumar

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been preferred to set aside the order of the learned Judicial Magistrate, Harur, dated 27.04.2021 made in Crl.M.P.No.1958 of 2019 in S.T.C.No.356 of 2018.



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2. The petitioner is the accused in a private complaint preferred by the respondent / complainant for an offence under Section 138 of N.I. Act. During the course of the proceedings, the petitioner has filed a petition under Section 45 of the Indian Evidence Act, seeking an order to send the impugned cheque for comparing the signature therein with the admitted signatures of the petitioner and obtain a report. The said petition was dismissed. Aggrieved over that this Criminal Original Petition has been preferred.

3. The learned counsel for the petitioner submitted that the signature found in the impugned cheque and the admitted signatures of the petitioner would show the difference even for the bare eyes examination; but the learned Judicial Magistrate, Harur, without considering the genuineness of the concern shown by the petitioner, had chosen to dismiss the petition.

4. Pending the proceedings, a report has been called for from the learned Judicial Magistrate, Harur, with regard to the availability of the original cheque. On account of the submission of the learned counsel for the petitioner that the Court has not marked even the original cheque during the trial. In the report submitted by the learned Judicial Magistrate, Harur, it



is stated that the original cheque is in the safety locker of the Court and the same is compared with the xerox copy of the cheque and the xerox copy is marked as Ex.P.1 after comparison and kept with the case records. The above practice is adopted in order to ensure that the original cheque should not be misplaced or lost.

5. The report confirmed that the original cheque is kept in the safety locker of the Court and it has not been returned to the petitioner. So, the petitioner can not state that the Court has proceeded to mark the xerox copy without even asking the complainant to produce the original.

6. The learned Judicial Magistrate, Harur, has observed in the impugned order that the delay in filing the petition under Section 45 of the Evidence Act and the inconsistent stand taken by the petitioner in denying the signatures are the reasons to dismiss the petition.

7. The learned counsel for the petitioner submitted that there is a conspicuous difference seen in the cheque and the admitted documents containing the signatures of the petitioner. Though there is a



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delay in filing the petition for comparing the signatures by sending to the scientific expert, it is always open to the Court to invoke the powers under Section 73 of the Indian Evidence Act to examine the signatures by itself and render a finding on that score, if the contemporary documents are produced by the petitioner.

8. Since the petitioner had denied the signature atleast at a later stage and has submitted that there is noticeable difference in the signatures even to the bare eyes examination, in the interest of justice, I feel a direction should be given to the learned Judicial Magistrate, Harur, to do the exercise of comparing the signature on the impugned cheque with the admitted contemporary signatures of the petitioner, under Section 73 of the Indian Evidence Act. I feel this will serve the interest of justice.

9. In view of the above stated reasons, this Criminal Original Petition is partly allowed and the order of the learned Judicial Magistrate, Harur, dated 27.04.2021 made in Crl.M.P.No.1958 of 2019 in S.T.C.No.356 of 2018, is set aside and the learned Judicial Magistrate, Harur, is directed to compare the signature on the impugned cheque with the



admitted contemporary signatures of the petitioner and render a finding on this also in his final report. Consequently, connected Miscellaneous Petition is closed.

26.10.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri

To

1.The Judicial Magistrate, Harur.

2. The Public Prosecutor,
Madras High Court,
Chennai.



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R.N.MANJULA, J.

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