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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24/11/2022

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)No.678 of 2022

and

Cr1.MP(MD)No.8450 of 2022

K.Ramesh : Revision Petitioner/Accused

Vs.

K.V.Sivakumar : Respondent/Complainant

PRAYER:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, against the order passed by the Judicial Magistrate No.II, Tiruchirapalli, in Cr.M.P No.4621 of 2018 in CC No.337 of 2015, dated 27/06/2022.

For Petitioner : Mr.C.M.Arumugam

For Respondent : No appearance

O R D E R

This criminal revision has been filed seeking in order to set aside the order passed by the Judicial Magistrate No.II, Tiruchirapalli, in Cr.M.P No.4621 of 2018 in CC No.337 of 2015, dated 27/06/2022.

**2. The facts in brief:-**

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A complaint was filed by the complainant under section 200 Cr.P.C for punishing the revision petitioner under section 138 of the Negotiable Instruments Act stating that he borrowed a sum of Rs.5,00,000/-, on 16/10/2014 promising to repay the same with 12% interest per annum. Towards discharge of the same, he issued the disputed cheque, on 01/10/2015 drawn on ICIC Bank, Contonment Branch, Trichy. When that was presented for payment, on 05/10/2015, that was returned with an endorsement "Account Closed, on 12/10/2015. After completing the statutory formalities, the above said private complaint was filed.

3. During the pendency of the above said criminal proceedings, a petition under section 45 of the Indian Evidence Act was filed by the revision petitioner seeking in order to send the disputed cheque for handwriting expert examination. That was dismissed by the trial court stating that there is no necessity, since section 73 of the Indian Evidence Act gives power to the court to compare the disputed signature with that of the admitted signature.



4. Now the legality of the above said order has been challenged in this revision.

5. No doubt that section 73 of the Indian Evidence Act gives power to the trial court to compare the disputed signature with that of the admitted signature. There is no quarrel on that.

6. The learned counsel appearing for the revision petitioner would submit that it is not always advisable in all situations and circumstances to compare the disputed signature by the court itself, when there is specific denial with regard to the signature of the accused in the disputed cheque.

7. No doubt that the Calender case of the year 2015 and the above said petition came to be filed in 2018. But the impugned order has been passed after a lapse of four years. The reason for keeping the above said simple petition pending for more than four years is not understandable.



8. Now whatever it may be, as pointed out by the revision petitioner, comparison of the signature by the handwriting expert may not be a conclusive one. But it is desirable that cautioned approach must be made by the court. Because comparing by the court itself by exercising the power under section 73 of the Indian Evidence Act was considered to be not advisable.

9. The learned counsel appearing for the revision petitioner would rely upon the judgment of this court passed in CrI.RC No.166 of 2017, dated 24/09/2018 (K.Sureshkumar Vs. Badhrudeen). After elaborately quoting the judgment on this point, it has been pointed out by the learned counsel appearing for the revision petitioner that when contradictory statements are made with regard to the particulars of the signature and writing in the disputed document, it is always advisable to take an expert advise. Here also, it has been pointed out to the effect that during the course of cross examination of PW1, a specific question has been asked as to the filling up the particulars as well as the signature. It has been stated by him that those things provisions filled up by the revision petitioner.



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10. So in the facts and circumstances of the case, I am of the considered view that the impugned order passed by the trial court is liable to be set aside. Accordingly, the revision petitioner should produce the document, which contains his signature and handwriting, which are contemporaneous in nature. Further, the expenses must also be borne by the revision petitioner and the usual steps must be taken by the trial court to send the document to the expert examination.

11. With the above said direction, this criminal revision is **allowed** and the impugned order passed by the Judicial Magistrate No.II, Tiruchirapalli in Cr.M.P No.4621 of 2018 in CC No.337 of 2015, dated 27/06/2022 is set aside. Consequently, connected Miscellaneous Petition is closed.

24/11/2022

Index:Yes/No
Internet:Yes/No

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To,

The Judicial Magistrate No.II,
Tiruchirapalli.



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G.ILANGOVA, J

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