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CRL.R.C.(MD).No.781 of .



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on : 25.08.2022**

**Pronounced on : 02.09.2022**

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

**CRL.R.C.(MD).No.781 of 2022**

**and**

**CRL.M.P.(MD).No.9709 of 2022**

1.M/s.Jambai Hardware Stores,  
Rep. by its Managing Partner,  
S.Mohamed Yahiya,  
Tanjore Main Road,  
Thiruverumbur, Trichy-13.

2.S.Md.Yahiya

3.S.Hassan Ali

4.Y.Shakila Banu

: Petitioners/Petitioners/Appellant

Vs.

Prakash A.Khanna

: Respondent/Respondent/Respondent

**PRAYER:** Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C, to call for the records in Cr.M.P.No.2 of 2021 in CrI.A.No.1 of 2020, dated 05.04.2022 on the file of the learned Principal District and Sessions Judge, Tiruchirappalli and revise the same.



For Petitioners : Mr.N.Mohideen Basha

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### ORDER

The Criminal Revision Petition is directed against the order passed in Cr.M.P.No.2 of 2021 in Crl.A.No.1 of 2020, dated 05.04.2022 on the file of the learned Principal District and Sessions Judge, Tiruchirappalli, dismissing the petition filed under Section 293 of Cr.P.C.

2.The petitioners are the appellants in Crl.A.No.1 of 2020 on the file of the learned Principal District and Sessions Judge, Tiruchirappalli and accused in S.T.C.No.201 of 2018 on the file of the learned Judicial Magistrate No.IV, Tiruchirappalli.

3.The respondent is the complainant and he filed a private complaint under Section 200 Cr.P.C., against the petitioners for the alleged offence under Section 138 of N.I. Act.

3.The learned Judicial Magistrate No.IV, Trichy, after conducting trial, has passed a judgment, dated 25.11.2019, convicting the petitioners/accused for the offence under Section 138 of N.I. Act and sentenced the first accused firm to pay a fine of Rs.5,000/- and sentenced the accused 2 to 4 to undergo six months Simple Imprisonment each and to pay a fine of Rs.5,000/- each, in default to



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undergo one month Simple Imprisonment. Challenging the said Judgment of conviction and sentence, the accused have preferred an appeal in Crl.A.No.1 of 2020 and the same is pending on the file of the learned Principal District and Sessions Judge, Tiruchirappalli.

4.Pending appeal, the petitioners/accused have filed a petition in Cr.M.P.No.2 of 2021 under Section 293 of Cr.P.C. seeking orders for forwarding the documents exhibited as Ex.P.1 to Ex.P.8 to the Neutron Activation Analysis Chemistry Division, Bhabha Atomic Research Centre, Trombay, Mumbai for examining the age of the ink used in the signatures found in Ex.P.1 to Ex.P.8 compared with the contents filled up in those documents and for sending of the report.

5.The respondent/complainant has filed a counter statement raising serious objections for granting the relief claimed by the petitioners/accused.

6.The learned Principal District and Sessions Judge, after enquiry in the above petition in Cr.M.P.No.2 of 2021, has passed the impugned order, dismissing the same. Aggrieved by the said order of dismissal, the petitioners/accused have come forward with the present criminal revision.



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7.The case of the complainant is that the accused have approached the complainant for financial help and received Rs.30,00,000/- on 10.10.2005 from the complainant, that after executing promissory notes, the accused were paying interest to the complainant for some time, that after expiry of two years period, since interest were not paid, the complainant insisted for the return of the loan amount along with interest, that the accused have issued cheques in favour of the complainant in order to repay the amounts due, that three cheques were issued by the second accused duly signed by him in the name of the first accused and two other cheques were signed by the fourth accused duly signed by her in the name of her firm, that the complainant had presented the cheques for collection in Union Bank of India on 17.11.2007, that the cheques were returned dishonoured with an endorsement as “funds insufficient”, that the complainant had issued a legal notice on 21.11.2007, that the accused had received the notice and sent a reply notice on 22.12.2007 to the complainant containing false and frivolous allegations and that since the amount due was not paid, the complainant was constrained to lodge the above complaint.

8.The main contention of the petitioners is that the blank pro-notes and cheques issued by the first accused partnership firm related to the borrowings since 1996 and 1997 and they were not at all signed or issued or delivered during 2005 as well as 2007, that all payments cleared by 1996 has been proved through



the documents filed by the accused, that the accounts registers filed, checked by Taxation Authorities, prove that there was no transaction during 1996 and 1997, when the blank documents were handed over, that the pro-notes and cheques marked as Ex.P1 to P8 were not filled up by the accused, excepting his signing on the blank printed forms, that the fading of the ink of the signatures clearly proved that they were not signed at the time of filling up of the contents of the pro-notes and cheques, that the trial Court has not embarked on finding out the veracity of the defence and that the age of the ink as found in the documents will prove that the documents were filled up long after the signing of the same.

9.The defence of the complainant is that the petitioners/accused had raised the issue for the first time, that the accused after losing the case in the trial Court, the petitioners seeking investigation of an expert, at the appeal, is not maintainable and that the above petition has been filed only to drag on the proceedings. The accused have taken a plea that the cheques were not issued on the dates referred by the respondent and the borrowings commenced and continued since 1993, that the complainant had misused the blank cheques and blank pro-notes issued long ago and that the documents signed 11 years ago have been subsequently filled up for filing the frivolous complaint.



10.As already pointed out, the documents marked as Ex.P.1 to Ex.P.8, which are all the promissory notes and cheques said to be issued by the accused are sought to be send to Nutron Activation Analysis Chemistry Division, Bhabha Atomic Research Centre, Trombay, Mumbai for expert opinion.

11.The learned counsel for the petitioners has relied on the decision of the Telangana High Court in *J.Purushottam Vs. The State of Telangana in Crl.R.C.No.2363 of 2018, dated 22.02.2019* and the decision of the Bombay High Court Bench at Aurangabad in *Vijaykumar Gulabchand Baldava Vs. Gautam Prakash Kulkarni in Writ Petition No.10793 of 2015, dated 28.11.2018*. In both the decisions, the High Courts have, by setting aside the orders of the trial Court, directed the concerned Courts to send the documents in question to the Nutron Activation Analysis, BABC, Mumbai.

12.At this juncture, it is necessary to refer the decisions of this Court:-

(i) **2014-2-LW-579 [M/s.Dhana Lakshmi Mills Limited**

**Vs. R.Krishnamurthy and Others] :-**

*“28. In Gopal,Sv.D.Balachandran, reported in 2008 CTC (1) 491, this Court (M.Jeyapaul, J) has held that age of ink cannot be determined by expert with scientific accuracy and it was found by this Court in the decision, that filing such a petition to find out the age of the ink would create only further confusion. Hence, no expert opinion would be required to find out the age of the ink.*



29. In *Yash Pal V. Kartar Singh*, reported in AIR 2003 Punjab and Haryana 344, the Punjab and Haryana High Court has also taken a similar view that the age of the ink cannot be determined on the basis of writing. If the ink is manufactured five years before the date of the execution of the document and use of the same effectively on a particular date for the first time would not resolve any controversy, but it would create only confusion.

34. When there is no scope for scientific investigation, Commissioner cannot be appointed, under Order 26 Rule 10A CPC. On the facts and circumstances of the case on hand, it is clear that the age of the ink could not be decided by any expert, as the same ink was used by the scribe, who wrote the minutes of the meeting. It is also relevant that five other Directors, who have admittedly signed have not raised any plea of subsequent interpolation or forgery, hence, the application filed under Order 26 Rule 10A CPC is not legally sustainable. Except causing delay in the disposal of the suit, allowing the petition would not serve any other purpose and there is no scope for scientific investigation.”

(ii) 2015-1-LW-(Cr.) 338 [A.Inayathullah Vs.

A.Ramesh] :-

“5) Paragraph Nos. 7 to 9 of the Judgment in *R. Jagadeesan Vs. N. Ayyasamy*, reported in 2010 (1) MWN (Cr.) DCC 97: 2010 (1) CTC 424, considered in *panneerselvam's* case, are extracted.

'4. At the outset, the petitioner admits his signature in the cheque in question and he only contends that the ink by which the dates and amount filled therein differs. In other words, the petitioner seeks to ascertain the age of the ink by which the dates and amounts were filled in the cheque which



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*cannot be done in view of the decision of this Court reported in (R. Jagadeesan Vs. N. Ayyasamy) (2010 (1) CTC 424). In that decision, this Court held that there is no such facility available in India, especially in Tamil Nadu to compare the age of the ink. In Para Nos.7, 8 and 9 it was held as follows:-*

*7. In order to ascertain the correctness of the said statement, this Court had requested the learned Additional Public Prosecutor Mr. N.R. Elango to request either the Director or the Assistant Director, Document Division, Forensic Science Department, Chennai, to be present before this Court to explain the position. Accordingly, today, Mr. A.R. Mohan, Assistant Director, Document Division, Forensic Science Department, Government of Tamil Nadu, Chennai is kind enough to be present before this Court. According to him, he is the Head of the Document Division of the department. On a query made by this Court regarding the above position, he would explain to this Court that there is no scientific method available anywhere in this State, more particularly, in the Forensic Science Department, to scientifically assess the age of any writing and to offer opinion. However, he would submit that there is one institution known as Neutron Activation Analysis, BABC, Mumbai where there is facility to find out the approximate range of the time, during which the writings would have been made. It is a Central Government Organisation. According to him, even such opinion cannot be exact. He would further submit*



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*that since it is a Central Government Organisation and confined only to atomic research, the documents relating to prosecutions and other litigations cannot be sent to that institution also for the purpose of opinion. He would further submit that if a document is sent for comparison, with the available scientific knowledge, opinion to the extent as to whether the same could have been made an individual, by comparing his admitted handwritings or signatures, alone could be made. He would further submit that if there are writings with two different inks, in the same document, that can alone be found out. But he would be sure enough to say that the age of the writings cannot be found out at all to offer any opinion.*

*8. In view of the above clear and unambiguous statement made by no less a person than the Head of the Department of Forensic Science, I am of the view that the whole exercise adopted in various Courts in this State to send the disputed documents for opinion to the Forensic Department in respect of the age of the writings and the documents is only futile. If any document is so sent, certainly the department will say that no opinion could be offered. As a matter of fact, the Assistant Director would inform the Court that already many such documents, which were sent to them by various Courts in the State for such opinion, have been returned by them with the report that no such opinion could be offered.*



9. *In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due to scientific advancements, new methods are invented to find out the age of the writings.'*

6) *After considering the said judgment, at Paragraph Nos.5 & 6 in Panneerselvam's case, this Court held as follows:*

*'5. In the light of the above decision, the Court below is right in rejecting the plea of the petitioner to send the disputed cheque in question for ascertaining the age of the ink or the variation in the ink in the subject matter of the cheque.*

*6. The Court below also found that if the cheque in question was issued long back, as contended by the petitioner/accused, the same can be proved by way of bank records and therefore also the comparison of the admitted signature and the alleged disputed signature are unnecessary. Such a reasoning assigned by the court below is valid and justified. Further, the petitioner has filed the instant application only after three years from the date of institution of the case by the respondent. In any view of the matter, in the light of the decision of this Court, mentioned supra, the relief sought for by the petitioner cannot be granted. The Civil Revision Petition is therefore dismissed. Consequently, Connected M.P. No. 1 of 2011 is closed.'*

7) *Though after ascertaining as to whether, there is any expert available in this country, and in particular, Central Forensic Sciences Laboratory, Hyderabad and the Director of Forensic*



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*Sciences, Chennai, this Court has held that reference cannot be made to any expert for ascertaining the age of the ink used on the disputed document/cheque, the present petition has been filed challenging the order rejecting the abovesaid prayer.*

*10) Cheque is stated to have been issued on 18.02.2013. As rightly observed by the Court below, petition under Section 45 of the Indian Evidence Act r/w Section 139 of the Negotiable Instruments Act, has been filed after the examination of the accused. There is no competent authority to ascertain the age of the ink and the said facility is stated to be not available in the Forensic Departments in India. There is no illegality in the finding recorded by the Court below, warranting interference.”*

13.It is pertinent to note that as per the directions of the learned Single Judge in ***A.Inayathullah's case***, the Assistant Director appeared before the Court and informed that there is no scientific method available anywhere in this State, that there is one institution known as Neutron Activation Analysis, BABC, Mumbai, where there is facility to find out the approximate range of the time, during which, the writings would have been made and he submitted that even such opinion cannot be exact. He further submitted that the said Neutron Activation Analysis is confined only to atomic research, the documents relating to prosecutions and other litigations cannot be sent to that institution.

14.On considering the various decisions of this Court and other Courts, this Court in ***Kanagaraj Vs. Ramamoorthy in CRP.(MD)No.601 of 2021*** has



observed that “ *it is very much clear that there is no mechanism or scientific method to find out the age of the writing or ink. But the learned Additional District Judge, without considering the non-availability of any such mechanism, by simply observing that the defendant has to be given an opportunity to prove his defence and no prejudice would be caused to the plaintiff, allowed the petition. Hence, this Court has no hesitation to hold that the impugned order is not good in law and the same is liable to be set aside.*”

15.The learned Principal District and Sessions Judge, considering the non-availability of any such mechanism, has passed the impugned order, dismissing the petition.

16.Considering the above, the impugned order, dismissing the petition filed by the accused cannot be found fault with and consequently, this Court concludes that the above Criminal Revision Petition is devoid of merits and the same is liable to be dismissed. Since the Criminal Appeal filed challenging the Judgment of conviction and sentence passed in the case instituted for the offence under Section 138/142 of N.I. Act is pending from 2020 onwards, this Court is of the view that necessary directions are to be issued for earlier disposal of the appeal.



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17.In the result, this Criminal Revision Petition is dismissed. The learned Principal District and Sessions Judge, Tiruchirappalli is directed to dispose of the Criminal Appeal in Crl.A.No.1 of 2020, within a period of two months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

**02.09.2022**

Index : Yes/No

Internet : Yes/No  
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To

- 1.The Principal District and Sessions Judge, Tiruchirappalli.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.
- 3.The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR, J.**

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**Pre-delivery order made in  
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