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Crl.R.C.No.315 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.315 of 2020

and

Crl.M.P.No.2321 of 2020

K.S.Ganesan

.. Petitioner

Vs.

P.S.Deivaraj

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order of dismissal passed in Crl.M.P.No.4942 of 2019 in S.T.C.No.166 of 2018 dated 20.11.2019 on the file of the Judicial Magistrate Court at Tiruchengode by allowing the present Criminal Revision petition.

For Petitioner : No appearance

For Respondent : No appearance

ORDER

There is no representation for the petitioner as well as the respondent.



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2. This Criminal Revision Case is filed by the accused in S.T.C.No.166 of 2018 on the file of the Judicial Magistrate, Tiruchengode, being aggrieved by the dismissal of the Crl.M.P.No.4942 of 2019 seeking to compare the writing in the disputed cheque by an expert.

3. It is a case where the complaint under Section 138 of Negotiable Instruments Act was initiated on 07.05.2018 by the respondent herein against the petitioner alleging that he has given a cheque for Rs.3,50,000/- to discharge the debt. The said cheque on presentation for collection on 16.03.2018, bounced back with an endorsement “Funds Insufficient”.

4. When the complainant mounted in the witness box and examined as PW.1, the accused/petitioner herein has cross examined him regarding the writing found in the subject cheque and his case is that the blank cheque given as a security has been filled up by the complainant. Therefore, he wanted to compare the writing found in the cheque, particularly, the numbers, figures and the name of the drawee.



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5. The Trial Court, on considering the request and the reasons stated therein to send the documents for handwriting expert relying upon Section 20 of N.I.Act., and 139 of N.I.Act r/w. Section 45 of Evidence Act, has held that the Courts have decided when a person is in possession of the incomplete instruments, has the authority to fill it up and put it to use in view of Section 20 of N.I.Act. The expert gives opinion that the figures Rs.3,50,000/- and the date on the cheque written by two different version, it will not render the document as defective instrument. Therefore, the petition was dismissed.

6. Aggrieved by that, the revision petition is filed on the ground that the opinion of the handwriting expert is necessary in this case to prove that the material particulars in the cheque was written by the complainant himself and not by the drawer of the cheque and it is contended that Section 20 of N.I.Act is restricted only pro-note and bill of exchange and not for cheques. Though there is no representation on behalf of the complainant and the respondent, since the plea has been taken under Section 20 of N.I.Act, is not applicable to the cheque, it is a



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duty of the Court to clarify Section 20 of N.I.Act, which is extracted below:

“20. Inchoate stamped instruments:- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument any thing in excess of the amount intended by him to be paid thereunder”



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7. Section 6 of the N.I.Act defines the 'cheque' as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Therefore, the contention of the petitioner is that Section 20 of N.I.Act will not apply for the cheque and it is a felicitous argument.

8. As far as the plea of the petitioner is that, no prejudice will be caused to the complainant, if the document is sent for handwriting expert and it is not a prejudiced cause otherwise. As far as the facts of the case is concerned, the request to send the document as emanate to the accused after the complainant was examined in chief and cross. Section 138 of N.I. Act contemplates that once the cheque is bounced, the complainant has to inform the drawer about the return of cheque and call upon him to pay the cheque within 15 days. Hence there is any dispute regarding the liability to pay the cheque amount, the said dispute should be reflected in the reply notice.



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9. As far as this case is concerned, the accused has given his reply on 02.04.2018 on receipt of statutory notice dated 24.03.2018. The contention of the petitioner/accused is that the subject cheque was obtained from him under threat and force long before filing of the complaint. If it is so, the fact has to be proved through other documents and not by getting an expert opinion about the writing of the cheque.

10. The complainant has filed the complaint that the accused borrowed Rs.3,50,000/- on 16.12.2017 and gave the post dated cheque dated 16.03.2018 and when the said cheque was presented, there was no fund in the account of the accused. By proving that the writings in the cheque are by multiple hands will not discharge the burden of presumption under Section 139 of N.I.Act. Further, when Section 20 of N.I.Act as stated above, permit the holder of the cheque to fill the cheque which is an inchoate document, this Court finds no error in the order of the Trial Court. The petition to refer the document to expert and the revision petition primarily filed to protract the proceedings, the accused has successfully achieved. That is the reason the matter is listed on



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several occasions. Hence the Criminal Revision Case is dismissed as devoid of merits. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

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Internet : Yes/No

Index: Yes/No

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To

The Judicial Magistrate Court, Tiruchengode.



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Dr.G.JAYACHANDRAN, J.

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