



CRL.R.C.No.321 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.321 of 2023 and
CrI.M.P.No.2614 of 2023

E.Yuvaraj

... Petitioner

Vs

K.Arumugam

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w.401 of Cr.P.C. to set aside the order, dated 20.01.2023 passed by the learned VI Additional City Civil Court, Madras, dismissing CrI.M.P.No.19620 of 2022 in CrI.A.No.278 of 2019 and allow CrI.M.P.No.19620 of 2022 in CrI.A.No.278 of 2017.

For Petitioner : Mr.B.Hari Krishnan

For Respondent : Mr.G.Mohammed Aseef

ORDER

This Criminal Revision Case has been filed challenging the order of dismissal, dated 20.01.2023 passed by the learned VI Additional City Civil Court, Chennai, made in CrI.M.P.No.19620 of 2022 in CrI.A.No.278 of 2019.

2. The brief facts of the case are that the respondent who is the



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complainant has filed a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act and the same was taken on file in C.C.No.5326 of 2017. The trial Court after appreciating the evidence on record, found the accused guilty and convicted him for the offence under Section 138 of the Negotiable Instruments Act. Aggrieved against the said order, dated 01.07.2019, the petitioner has preferred an appeal in C.A.No.278 of 2019.

3. During pendency of the same, the petitioner has filed a petition under Section 45 of the Indian Evidence Act, 1872, in CrI.M.P.No.13055 of 2022 to refer the disputed cheques to a hand writing expert to ascertain whether the signature found in the disputed cheque is that of the petitioner. The learned VI Additional Sessions Judge, Chennai has allowed the said application on 20.04.2021, permitting to send the disputed cheques to the Forensic Lab, Document Division for comparison. The appellate Court has also directed the petitioner to file necessary application for appointment of Commissioner to carry the documents safely to the Forensic Lab.

4. In pursuant to that, the petitioner has filed an application in



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Crl.M.P.No.19620 of 2022 for appointment of an Advocate Commissioner to collect the disputed cheques Exs.P1 and P2 with the admitted documents of the contemporary period after two years. On considering the submissions, the learned VI Additional Sessions Judge, Chennai dismissed the application on 20.01.2022. Aggrieved against the said order, the present Criminal Revision has been preferred by the petitioner.

5. The learned counsel for the petitioner submitted that the learned Judge has dismissed the application on two grounds, such as delay and the documents 3 to 5 filed along with the petition viz., postal acknowledgment, dated 22.05.2017, 313 questioning signed by the petitioner dated 26.07.2018 and the Chief examination of the petitioner as DW1, dated 15.11.2018 cannot be considered as contemporaneous and admitted documents. According to the learned counsel for the petitioner, all the above documents bears the signature of the petitioner. The delay is also neither wilful nor wanton. Hence, he prayed for allowing this Criminal Revision.

6. The learned counsel for the respondent submitted that the documents



produced by the petitioner are not nearer to the disputed cheques. The documents viz., the postal acknowledgment, dated 22.05.2017, 313 questioning signed by the petitioner dated 26.07.2018 and deposition of the accused as DW1 dated 15.11.2018 are signed by the accused subsequent to the dispute arose between the parties. Hence, they cannot be accepted for comparison with disputed cheques. Therefore, the trial Court has rightly declined to send the signatures for comparison. Hence, the order does not warrant any interference by this Court.

7. I have considered the rival submissions.

8. On perusal of the impugned order and the materials on record, it is seen that the petitioner is the accused and the respondent is the complainant in C.C.No.5326 of 2017 on the file of the Metropolitan Magistrate, FTC No2, Egmore, Allikulam, Chennai. The trial Court, after trial, found the accused guilty and convicted him for the offence under Section 138 of the Negotiable Instruments Act. Aggrieved by the said Judgement, an appeal in C.A.No.278 of 2019 has been preferred by the petitioner before the VI Additional Sessions



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Judge, City Civil Court, Chennai. Pending the same, the petitioner has filed Crl.M.P.No.13055 of 2020 for forwarding the disputed cheques Exs.P1 and P2 dated 08.05.2017 and 10.05.2017 for comparison of the signature of the accused with the admitted signature the same was allowed. Subsequently, in pursuance to the said order, the petitioner has filed a petition under Section 293 (4) of Cr.P.C., in Crl.M.P.No.19620 of 2022 to forward the disputed signature in Exs.P1 and P2 to the Forensic Science Department, by appointing an Advocate Commissioner in order to clinically examine the disputed documents. The same was declined by the trial Court.

9. It is pertinent to note that in the order made in Crl.M.P.No.13055 of 2020, the appellate Court has directed the petitioner to file the documents which contains admitted signature nearer or closer to the disputed cheques dated 08.05.2017 and 10.05.2017. Though the petitioner/accused has produced the documents that contain admitted signature of the accused, the documents viz., postal acknowledgment, dated 22.05.2017, 313 questioning and deposition of the accused as DW1 are are singed subsequent to the dispute arose between the parties. Hence, this Court is of the view that the trial Court



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was not erred in rejecting the claim of the petitioner, to send the signatures for comparison with the disputed signatures. I find no error in the impugned order dated 20.01.2023. Hence, this Revision stands dismissed. However, the petitioner is at liberty to produce the admitted signature nearer or closure to the disputed cheques dated 08.05.2017 and 10.05.2017. Consequently, connected miscellaneous petition is closed.

19.04.2023

vum

Index: yes/no

Speaking order / Non speaking order

To

The VI Additional City Civil Court,
Chennai.

V. SIVAGNANAM, J.



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