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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2023

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THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.15751 of 2023

Thiru.A.Thangaraj

.. Petitioner

Vs.

Thiru.K.Murugesan

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the Learned 1st Additional District and Sessions Judge, Salem in Crl.R.P.No.39 of 2022 dated 24.03.2023 and in Crl.M.P.No.2162 of 2021 on the file of learned Judicial Magistrate 1 Court Salem dated 30.09.2022 and to issue directions to send the cheque for expert opinion U/s 45 of Indian Evidence Act as prayed for.

For Petitioner : Mr.I.Kabilan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been challenging the order passed by the learned First Additional District and Sessions Judge, Salem, in CrI R.P No.39 of 2022 dated 24.03.2023, confirming the order passed by the learned Judicial Magistrate I, Salem in CMP No.2162 of 2021 dated 30.09.2023, dismissing the application filed by the petitioner under Section 45 of the Evidence Act.

2. The respondent has filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act. During the pendency of the proceedings, the petitioner filed an application under Section 45 of the Evidence Act on the ground that the hand writing that is found in the cheque is not the hand writing of the petitioner and hence, the petitioner wanted to get the expert opinion. The Trial Court considered the application and passed an order on 24.03.2023 dismissing the application. Aggrieved by the same, the petitioner filed a Criminal Revision before the First Additional District and Sessions Judge, Salem, and the same was also



dismissed confirming the order passed by the Trial Court. Aggrieved by the same, the present Criminal Original petition has been filed before this Court.

3. Heard the learned counsel for the petitioner.

4. In the considered view of this Court, the learned First Additional District and Sessions Judge, Salem, ought not to have entertained the Criminal Revision, since the order passed under Section 45 of the Evidence Act is interlocutory in nature and there is a bar under Section 397(2) of Cr.PC to maintain such a revision. Therefore, the order passed by the learned First Additional District and Sessions Judge, Salem, is perse illegal.

5. In view of the above, this Court has to see if the Trial Court was right in dismissing the application filed by the petitioner seeking for expert opinion.



6. On carefully going through the order passed by the Trial Court, it is seen that the signature in the cheque is admitted and what has been denied is the handwriting that is found in the cheque. The Trial Court held that a cheque can be filled up by a different person and took into consideration Section 20 of the Negotiable Instruments Act in this regard. The finding of the Trial Court does not suffer from any illegality or infirmity. The petitioner is questioning the handwriting that is found in the cheque and hence, wants to take an expert opinion on the ground that the petitioner never filled up the cheque and that the respondent had misused the cheque. The law on this issue is too well settled and it has been held that Section 20 of the Negotiable Instruments Act which deals with inchoate instrument enables even a holder of the cheque to fill up the same. In a case of blank signed cheque, there is no need to send the cheque for getting an expert opinion to determine the details in the cheque and the onus is upon the accused persons to independently establish that the cheque was not issued in discharge of the debt / liability. Useful reference can be made to the judgement of the Apex



Court in **[Oriental Bank of Commerce Vs.Prabodh Kumar Tewari]**

reported in 2022 Madras Weekly Notes Crl. DCC 1.

7. In the light of the settled law, there is no ground for this Court to entertain this Criminal Original Petition and accordingly, the same stands dismissed. There shall be a direction to the Court below to complete the proceedings in STC No.1097 of 2017 within a period of three months from the date of receipt of a copy of this order.

14.07.2023

Index :Yes/No
Internet:Yes/No
Speaking/Non speaking order
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To

- 1.The learned 1st Additional District and Sessions Judge, Salem
2. The learned Judicial Magistrate 1 Court Salem.
- 3.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH,J

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