



WEB COPY



Crl.RC.No.1179 of 2023 & Crl.M.P. No.9161 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.RC.No.1179 of 2023 and
Crl. M.P. No.9161 of 2023

K. Ravichandran

...Petitioner

vs.

D. Shanmugam

...Respondent

PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code, 1973 against the order dated 17.03.2023 in Crl M.P. No.2086 of 2019 on the file of the Judicial Magistrate No.3, Salem in S.T.C. No.787 of 2019.

For Petitioner : Mr.S. Kalyanaraman

ORDER

The present Criminal Revision Petition is filed against the order dated 17.03.2023 in Crl M.P. No.2086 of 2019 on the file of the Judicial Magistrate No.3, Salem in S.T.C. No.787 of 2019.



Crl.RC.No.1179 of 2023 & Crl.M.P. No.9161 of 2023

2. This case is posted before this court today for admission and the

same is decided at the admission stage itself.

3. The revision petitioner is the accused in STC No.787 of 2019 on the file of the Judicial Magistrate No.3, Salem. The respondent/complainant filed a private Complaint under Section 200 Cr.P.C. against the present revision petitioner for the offences under Section 138 and 142 of the Negotiable Instruments Act.

4. The brief facts of the case are as follows:

- i. The revision petitioner/accused borrowed a sum of Rs.5 lakhs from the complainant on 24.04.2017 and handed over a post dated cheque bearing No.236855 dated 24.07.2017 drawn on ICICI Bank Ltd., Salem, Shevapet Branch, and agreed to repay the said amount along with interest @ 24% per annum.
- ii. When the cheque was presented by the complainant through his banker, namely, State Bank of India, Srirangapalayam Branch, Salem, the same was returned on 08.08.2017 for the reason "funds insufficient".



Crl.RC.No.1179 of 2023 & Crl.M.P. No.9161 of 2023

WEB COPY

iii. Thereafter, the complainant issued a legal notice dated 02.09.2017 calling upon the present revision petitioner to make the payment within a period of 15 days from the date of receipt of notice.

iv. Though the revision petitioner/accused received the said notice on 06.09.2017, he neither come forward to make good the payment nor issued any reply notice.

v. Therefore, the complainant filed the aforesaid complaint.

vi. Summons was issued to the accused and on his appearance copies of the records were furnished to him under Section 207 Cr.P.C., substance of allegations made in the complaint was put to the accused and since the accused denied of having committed any offence, the matter was posted for trial.

vii. The complainant examined himself as P.W.1 and the accused was also cross examined at length.

viii. Thereafter, the present revision petitioner filed a petition in Crl.M.P. No.2086 of 2019 under Section 45 of the Indian Evidence Act and Section 243(1) Cr.P.C. praying for sending the cheque for expert's opinion to compare the writing on the cheque along with the admitted writing of the revision petitioner.



Crl.RC.No.1179 of 2023 & Crl.M.P. No.9161 of 2023

ix. The learned Judicial Magistrate No.III, Salem, in her orders dated

WEB COPY

17.03.2023, held that the present revision petitioner, after admitting his signature on the cheque, cannot seek for expert's opinion with regard to the writing made in the cheque.

x. Aggrieved over the same, the present revision petition has been filed.

5.Mr.S. Kalyanaraman, learned counsel appearing for the revision petition contended that it is the specific case of the petitioner that he (accused) handed over a blank cheque to the complainant and that it was subsequently filled up by the latter and therefore, the same has to be referred to hand writing expert. He therefore prayed for allowing the present Criminal Revision Petition.

6. At the outset, it may be observed that when the accused had admitted his signature on the cheque, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act unless the contrary is proved by him. In the instant case, the specific contention of the petitioner/accused is that he only handed over a signed blank cheque and that the same was filled up later by the complainant in his own hand



writing. Even assuming that the case of the petitioner/accused is true,

Section 20 of the Negotiable Instruments Act comes into operation,

which reads thus:

Section 20 in The Negotiable Instruments Act, 1881

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 1[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 anything in excess of the amount intended by him to be paid thereunder.

7. In view of the same the trial court judge was right in not sending the cheque in question for expert's opinion and therefore, the present revision petition fails and is dismissed.



Crl.RC.No.1179 of 2023 & Crl.M.P. No.9161 of 2023

8. In the result,

WEB COPY

i. the Criminal Revision Petition is dismissed. No costs.

Consequently, connected Criminal Miscellaneous Petition is closed.

ii. The order dated 17.03.2023 in Crl. M.P. No.2086 of 2019 on the file of the Judicial Magistrate No.3, Salem in S.T.C. No.787 of 2019 , is confirmed.

11.07.2023

bga

Index : yes/no

Speaking /Non speaking Order

To

1. The Judicial Magistrate No.3, Salem.

2. The Section Officer, Criminal Section, High Court, Madras



WEB COPY



Crl.RC.No.1179 of 2023 & Crl.M.P. No.9161 of 2023

R.HEMALATHA, J.

bga

Crl.RC.No.1179 of 2023 and
Crl. M.P. No.9161 of 2023

11.07.2023