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1 of 4

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.28203 of 2022
and Crl.MP.No.17345 of 2022

M.Dhayalan, M/A 62 years
S/o.Munusamy

.. Petitioners/Petitioner/Accused

.Vs.

Pugazharasan
S/o.Karunanidhi

..Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 12.08.2022 made in CMP.No.6374 of 2022 in STC No.215 of 2022, on the file of the learned Judicial Magistrate No.I, Chengalpattu.

For Petitioner : Mr.T.Arockia Dass

For Respondent : Mrs.R.Priyanka
Mrs.A.Dipthi Munoth

ORDER

This criminal original petition has been filed challenging the order passed by the Court below dismissing the application filed u/s 45 of the Evidence Act in

[https://www.mhcoj.org/Files/Crl.MP.No.6374 of 2022 by order dated 12.8.2022.](https://www.mhcoj.org/Files/Crl.MP.No.6374%20of%2022%20by%20order%20dated%2012.8.2022.pdf)



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2. Heard Mr.T.Arockia Dass, learned counsel for the petitioner and Mrs.R.Priyanka, learned counsel for the respondent.

3.The respondent filed a complaint against the petitioner for offence u/s 138 of the Negotiable Instruments Act, 1881. The Complainant was examined as PW.1 and he was also cross examined on the side of the petitioner. After the examination of PW.1, the petitioner was also questioned u/s 313 Cr.PC. Thereafter, the petitioner filed an application in CrI.MP.No.6374 of 2022 u/s 45 of the Evidence Act, 1872, on the ground that the respondent has made a material alteration in the cheque and the same must be sent for expert opinion.

4.According to the petitioner, he had issued a cheque only for a sum of Rs.50,000/-. While issuing such the cheque, the petitioner had only filled up the amount in number and had signed the cheque and he had not filled up the words. Taking advantage of the same, it is contended that the respondent/complainant had prefixed the number by adding "7" before 50,000/- and thereby, had mentioned the amount as 7,50,000/- in the cheque and the words were also filled up by the Complainant, as if, it was issued for Rs.7,50,000/-. In view of the same, the petitioner wanted to get an expert opinion on this to substantiate his defence.

5.The Court below after considering the rival contentions gave its reasoning at Paragraph No.6 of the order. The Court below found that what was filled by the



petitioner in the cheque was only Rs.50,000/- in number. Even according to the petitioner, he had not filled up the cheque in words. Therefore, according to the petitioner, the respondent has inserted the number "7" before 50,000/- and has also filled up in words as Rs.7,50,000/-. The Court below found that no useful purpose will be served in sending the cheque for comparison since number "7" alone which is alleged to have been inserted by the Complainant cannot be sent for the purpose of getting an expert opinion. The Court below also brought in the concept of inchoate instrument by relying upon Section 20 of the Negotiable Instruments Act, 1881.

6.It is not necessary for this Court to go into the issue as to whether the concept of inchoate instrument will apply to the facts of the present case. The only dispute is with regard to the insertion of number "7" in the cheque. It will always be left open to the Court below to have a closer look at the cheque and exercise its power u/s 73 of the Evidence Act, 1872 and render a finding at the time of final disposal of the case. It is not necessary to send the cheque for expert opinion for this purpose. This clarity will sufficiently take care of the defence taken by the petitioner.

7.This Court does not find any illegality or infirmity in the order passed by the Court below warranting the interference of this Court in exercise of its jurisdiction u/s 482 of Cr.PC.



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4 of 4

N. ANAND VENKATESH,. J.
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8.In the light of the above discussion, this criminal original petition is disposed of with a direction to the Court below to dispose of C.C.No.215 of 2022, within a period of three months from the date of receipt of copy of the order. Consequently, connected miscellaneous petition is closed.

01.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
KP

To

Judicial Magistrate No.I
Chengalpattu.

Crl.O.P No.28203 of 2022