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CRL.RC.No.1321 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.RC.No.1321 of 2017

Sumathi

.. Petitioner/Respondent/Accused

Versus

V.S.Vijaykumar

... Respondent/Appellant/Complainant

Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the Additional Sessions Judge Magalir Neethi Mandram (Fast Track Court) Erode in C.A.No.144/2017 order dated 13.09.2017 reversing the judgment and order Acquittal passed in STC.No.566/2012 dated 03.05.2017.

For Revision Petitioner :	Mr. S.Veeraraghavan
For Respondent :	Mr.M.Karthik for T.C.Vasudevan

ORDER

This Criminal Original Petition has been preferred challenging the judgment of the Additional Sessions Judge, Magalir Neethi Mandram, (Fast Track Court) Erode dated 13.09.2017 in C.A.No.144 of 2017.



2.The petitioner is the accused against whom the respondent has given a private complaint under Section 138 of NI Act-1881, for dishonor of cheque. The case was taken on file by the Fast Track Court at Judicial Magistrate level, Erode in STC No.566 of 2012 dated 03.05.2017. After a full fledged trial, the learned Trial Judge had found the accused not guilty for the offence under Section 138 of the Negotiable Instruments Act,1881 and acquitted him. Aggrieved over the same, the complainant has preferred a Criminal Appeal in Crl.A.No.144 of 2017 before the learned Additional Sessions Judge, Magalir Neethimandram, Erode and the same was allowed and the accused was a found guilty for the offence under Section 138 of Negotiable Instruments Act, 1881 and he was sentenced to undergo one year simple imprisonment and imposed with a fine of Rs.2,00,000/- along with the compensation of Rs.50,000/-. Aggrieved over the same, the accused had preferred this revision petition.

3.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4. The learned Counsel for the revision petitioner submitted that the very defense of the petitioner is that he had neither signed nor issued the



impugned cheque as alleged by the respondent; the admitted signatures of the petitioner along with signature in the impugned cheque were also sent to the forensic department and the forensic expert has given a report that the signature in the impugned cheque does not tally with the admitted signature of the petitioner; even though, the learned trial Judge has rightly appreciated the merit of the rebuttal evidence on the side of the petitioner; however, the learned Appellate Judge simply overlooked the same and convicted the petitioner on his own presumption; hence the judgment of the Appellate Court should be set aside and the judgment of the trial Court should be restored.

5.The learned counsel for the respondent submitted that the report of the handwriting expert is not acceptable for the reason that the expert did not examine the signatures of the petitioner obtained by the trial Judge in the open Court which is marked as S.1 to S.15; the petitioner has the habit of putting her signatures differently at different point of time just to escape from her liability; the learned Trial Judge had omitted to appreciate the evidence in appropriate angle and that was rectified by the Appellate Judge and hence the revision should be dismissed.



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6.The respondent had preferred a private complaint by stating that the petitioner had availed a loan of Rs.2 lakhs from him and executed a cheque for Rs.2 lakhs and issued to him on 30.07.2012. When he presented the cheque for collection, it was returned for the reason 'opening balance is insufficient'. After complying the legal mandates, the respondent has filed the complaint. The petitioner denied her signature in Ex.P1 impugned cheque and has taken up a defense that the signature in the impugned cheque was a concocted one and hence the cheque itself is a forged one. The petitioner had taken steps to get the report of the forensic expert by comparing her admitted signature with that of the signature on the impugned cheque. The expert who has given his report in Ex.D1 and in which she has stated that the signature in the impugned cheque does not match with the signature found in the bank account opening form signed by the petitioner.

7.The learned Trial Judge has also obtained some 15 signatures in the open court and serialized it as S.1 to S.15. However, the handwriting expert had not chosen to take those signatures for consideration. Rather, she had proceeded to compare the signature on the impugned cheque with that of the



signature of the petitioner in her Bank account opening form. The reason given by the forensic expert in Ex.D1 would show that the result was based upon a detailed examination and the reasoning sheet attached with the report would show the same. The handwriting expert who was examined as DW.1 has stated in his evidence that he did not take into consideration of Sl.Nos.1 to 15 because those fixtures were not simply signed as a signatures but it was written like signatures.

8.The learner Counsel for the respondent submitted that the signatures which have been taken up for comparison belong to different period of time. He has a stated that the impugned cheque was issued on 15.06.2012 but the document taken up for comparison pertains to the year 2008. He further submitted that the report of the handwriting expert is not conclusive and the accused has to get into the box and state that the signature on the impugned cheque was not signed by her. In respect of the above contention, he relied on the judgment of the Hon'ble Supreme Court held in **M.Abbas Haji Vs. T.N.Channakeshava** [reported in **(2019) 9 Supreme Court Cases 606**]. It is held as under:

“5.The complainant filed an appeal to the High Court, which after considering the entire evidence, has delivered a well reasoned



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judgment upsetting the judgment of the Trial Court. The reasons which weighed with the High Court were that;

(1) the original appellant did not step into the witness box to state that he had not signed the cheque;

(2) that the opinion of the handwriting expert was only an opinion and not conclusive;

(3) that the original appellant had failed to prove that he had sent a reply to the notice sent to him by the complainant because so-called reply was not marked in evidence and no postal receipt of the same was placed on record.

6.It is urged before us that the High Court over- stepped the limits which Appellate Court is bound by criminal cases setting aside an order of acquittal. Proceedings under [Section 138](#) of the Act are quasi-criminal proceedings. The principles, which apply to acquittal in other criminal cases, cannot apply to these cases. As far as the present case is concerned, in addition to three reasons, given by the High Court, we are of the view that the original appellant has not even explained how the leaves of the cheque entered into the hands of the complainant. It is urged that in cross- examination of the complainant some suggestions were made that since the complainant was visiting the office of the original appellant, he had access to the same. The complainant had only admitted that he visited the office of the original appellant but he denied all the other suggestions. Thereafter, it was for the original appellant to prove his part of the case. The High Court, in our opinion, was right in holding the original appellant guilty under [Section 138](#) of the Act."

9.The learned counsel for the respondent further submitted that the petitioner had chosen to send a reply notice and in that also the petitioner had denied her signature on the cheque. There is no doubt about the legal position that the opinion of the handwriting expert is not conclusive.

10.No doubt the signatures taken for comparison pertains to different point of time, but even to the bare eye examination, the signature found in Ex.P1 cheque and the signature found in the acknowledgment for the legal



notice sent by the respondent would show that the signature found in the cheque has got a fundamental difference, irrespective of the fact that a person's signature would change in the course of time. The petitioner has sent the reply notice in which she had specifically stated that the cheque was not issued by her. However the learned Counsel for the respondent submitted that during the cross examination of DW.1 who is the petitioner herein, she has stated that she had handed over her the cheque book to the complainant and the evidence of DW.1 should be read as above. She has stated clearly that she has not signed the cheque but the cheque book itself was with him.

11.The case involved in the citation referred by the learned counsel for the respondent pertains a case where the complainant did not come to the witness box. But in the case on hand, the complainant herself examined as DW.2. The learned trial Judge did not consider the evidence of the handwriting expert alone, but also the evidence of DW.2. According to DW.2, ten women had obtained Rs.10,000/- each as loan from the respondent and for which the respondent wanted the cheque books to be handed over to him. If a person puts her signature in the cheque the initial



presumption would go in favour of the holder of the cheque. But the very categorical contention of the petitioner right from the beginning is that she did not sign the cheque and she had also offered explanation about how her cheque book fell into the hands of the respondent.

12. In that case, the respondent cannot have the benefit of initial presumption and it is for him to prove how the signatures belong to that of the complainant and the cheque has issued for a legally enforceable debt or liability. But the respondent has not discharged his burden as the learned trial Judge has rightly appreciated the entire evidence available on record and recorded that the accused is not found guilty for the offence 138 of NI Act. But the learned Appellate Judge without considering the impact of the evidence of DW.1 and DW.2 and also without giving due credence to the obvious difference found between the signatures in the cheque and the admitted signatures of the petitioner available in Court, has proceeded to record that the accused is guilty. In my opinion and in the background of the reasons already stated, the judgment of the Appellate Court is liable to be set aside and the judgment of the trial Court is liable to be restored and to that affect the revision is deserved to be allowed.



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In the result, this Criminal Revision Petition is **allowed**. The order passed by the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Court) Erode in C.A.No.144/2017 order dated 13.09.2017 is confirmed and the judgment and order Acquittal passed in STC.No.566/2012 dated 03.05.2017 is set-aside.

03.02.2023

Index: Yes/No
Speaking/ Non Speaking
Internet: Yes/No
Neutral: Yes/No
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R.N.MANJULA, J.,

jrs

To:

1. The I Additional District and Sessions Court,
Salem.
2. The Judicial Magistrate No.III , Salem.

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