



Crl.R.C.No.1592 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

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

Crl.R.C.No.1592 of 2023 and
Crl.M.P.No.14669 of 2023

P.Nayagi

... Petitioner

Vs.

Murugan Ma

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the orders, dated 03.08.2023 passed in C.M.P.No.4472 of 2023 in C.C.No.323 of 2017 by the Judicial Magistrate, Thirukoilur, Kallakurichi District.

For Petitioner : Mr.R.Baskar

ORDER

Challenging the orders dated 03.08.2023 passed in C.M.P.No.4472 of 2023 in C.C.No.323 of 2017 on the file of the Judicial Magistrate, Thirukoilur, the present criminal revision is filed.



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2. The respondent/complainant filed a private complaint under Section 200 of Cr.P.C., against the revision petitioner / accused for an offence punishable under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate, Thirukoilur.

3. The case of the complainant in a nutshell is as follows:

The petitioner / accused is known to the complainant and she had borrowed a sum of Rs.9 lakhs to meet her urgent business expenses and promised to repay the same with interest at 24% p.a. The accused did not repay the amount with interest as promised by her. Hence, the complainant approached her and requested the latter to make good the payment. Therefore the accused issued a post dated cheque bearing No.747072, dated 26.09.2017 drawn on State Bank of India, Thiruvannamalai Town Branch. When the complainant presented the cheque for collection through his banker viz., Lakshmi Vilas Bank, Arangandanallur branch, the same was returned with an endorsement 'Insufficient funds'.



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4. Thereafter the complainant issued a statutory notice dated 26.10.2017 to the accused demanding him to pay the amount due under the Cheque. According to the complainant, though the accused received the said notice, she did not pay any amount due under cheque. She did not also send any reply. Therefore, the complainant filed a private complaint under Section 200 of Cr.P.C., in C.C.No.323 of 2017 against the accused.

5. On receipt of the complaint, the learned Judicial Magistrate took cognizance of the offence after observing necessary legal formalities and issued summons for the appearance of the accused. Copies of records were furnished to the accused under Section 207 Cr.P.C., on her appearance. When the accused was questioned with regard to the substance of the accusation made against her in the complaint, she pleaded not guilty and therefore the case was posted for trial.



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6. The respondent / complainant examined himself as P.W.1 and cross examined by the accused and thereafter the accused was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against her. She denied of having committed any offence.

7. Subsequently, the revision petitioner / accused filed a petition under Section 45 of the Indian Evidence Act, in C.M.P.No.4472 of 2023 in C.C.No.323 of 2017 seeking to send the impugned cheque dated 26.09.2017 to the forensic lab for obtaining an expert opinion with regard to the age of the ink on the writing of the cheque and also the signature of the accused on the cheque.

8. The said application was dismissed by the trial Court Judge on the ground that the age of the ink cannot be detected as no such facility is available in India. It is further held that the accused refused to receive the statutory notice issued by the complainant and thus there is no reply notice from the accused. Though the accused appeared before the



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Court on 06.09.2018 itself, she did not state that the ink found on the cheque is of the year 2013 and it was not given on the date as alleged by the complainant.

9. Mr.R.Baskar, learned counsel for the petitioner contended that unless the age of the ink on the writing of the cheque is detected, the accused would not be in a position to rebut the presumption under Section 138 of the Negotiable Instruments Act. According to him, the impugned cheque was given only during the year 2013.

10. At the outset, it may be observed that the accused had not denied her signature on the cheque and her only contention is that the cheque was issued in the year 2013. It is true that there is no mechanism in India for ascertaining the age of the ink. The trial Court by a well considered order, had dismissed the application by observing thus:

“8. On the other hand, the learned counsel for the respondent/complainant contended that the only motive of the petitioner/accused to file such vexatious application at belated stage is to protract the proceedings, that though the petitioner has participated in the proceedings and filed



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various petitions u/s. 317 Cr.PC it is not acceptable one to state that only very recently she gained knowledge about the case filed against her. Furthermore, the petition is filed at a belated stage and it is possible to determine the age of the ink only within two years period from the date of it's make. Therefore the learned counsel for the respondent prays for dismissal of the petition.

9. Further the learned counsel for the respondent relied upon a judgment made by the Hon'ble High Court of Madras in A.Inayathullah Vs. A.Ramesh 2015 (1) MLJ (Crl) 531 holding that age of the ink cannot be ascertained in India as no such facility is available in the forensic labs in India.

10. This Court carefully considered the petition, counter and rival submissions and authorities cited by both parties. No doubt over the propositions made under each and every judgments cited by the Hon'ble Supreme Court and Hon'ble High Court. However, each case has to be dealt in accordance with their own facts and circumstances.

11. In the case on hand, the petitioner/accused stated that he came to know about the complaint only very recently. Incidentally in the petition cause-title, the petitioner has cited an address and sworn an affidavit as if she lives at Chennai. However, in the vakalath filed before this Court she has admittedly cited the address mentioned in the complaint. On appearance before the Court and while filing vakalath the petitioner has not denied the complaint mentioned address of her.



12. *The statutory notice sent by the respondent to the petitioner returned as "Unclaimed". Hence the same is deemed to be served. However, there was no reply from the petitioner for the statutory notice. Furthermore, as early as on 06.09.2018 itself the petitioner has made her first appearance before this Court. Hence, at the outset, this Court reject the contention of the petitioner that she came to know about the case only very recently.*

13. *The petitioner has not made any reply for the statutory notice. On appearance before this Court she was explained with substance of accusations against her. For which the petitioner has made a bare denial. She has not raised any specific defence before this Court at the earliest time while explaining the substance of accusations. The signature made in the disputed cheque was not denied by the petitioner. Only during the cross examination of PW1 on 02.06.2023 for the first time, the petitioner, admitting her signature in the cheque, has taken a defence that in the year 2013-2014 the disputed cheque was given in blank as a security for the chit transaction made with the wife of the respondent.*

14. *Such defence taken by the petitioner can very well be proved by other means like producing the bank records or receipts of chit transactions or any other direct evidence admissible in the eye of law. Even in the decision relied upon by the learned counsel for the accused in T.Nagappa Vs. Y.R. Muralidhar dated 24.04.2008, the Hon'ble Supreme Court observed that the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant.*



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15. Further, the judgment relied upon by the learned counsel for the petitioner is of the year 2008. Whereas, the learned counsel for the respondent has cited a judgment of the year 2015 of Hon'ble High Court of Madras in A.Inayathullah Vs. A.Ramesh 2015 (1) MLJ (Crl) 531 whereunder it was held that no facility is available in any of the Indian forensic labs to determine the age of the ink. Further it was observed that even if such opinion is given, the same may not be an exact one.

16. Considering the above observations made by the Hon'ble High Court of Madras and considering the fact that several options are still open for the petitioner in other means to prove his defence like production of bank records, chit transaction receipts and other documentary evidences this Court is of opinion that an expert opinion determining the age of ink in the disputed cheque is an irrelevant one and same is not necessary for just decision of the case. In other words, allowing this petition will only hamper the trial as the opinion given regarding age of ink, if any, as observed by the Hon'ble High Court would not be an exact opinion. ”

11. In view of the above, it appears that the present petition has been filed only to protract the proceedings. Hence, I do not find any reason to interfere with the orders passed by the trial Court Judge. Since the Calender Case in C.C.No.323 of 2017 is of the year 2017, the Judicial Magistrate, Thirukoilur is directed to dispose of the same, within a period of one month from the date of receipt of a copy of this order.



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12. With the above observation, this Criminal Revision case is dismissed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non-Speaking order
vum

To

The Judicial Magistrate, Thirukoilur.



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