



CrI.O.P.(MD) No.692 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD) No.692 of 2023

Kasi @ Suji,

: Petitioner

Vs

State represented by
The Inspector of Police,
CBCID Police Station,
Nagercoil,
Kaniyakumari District.
Crime No. 08/2020.

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to set aside the return Docket Order, dated 02.01.2023, on the file of the Fast Track Mahila court, Kaniyakumari at Nagercoil and consequently direct the learned Judge to take the petition filed by the petitioner under section 45 and 73 of Indian Evidence Act for obtaining the opinion of the handwriting expert by comparing Ex.P 2 and Ex.P.3, number the same and decide it on merits.

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For Petitioner : Mr.V.Kathirvelu
Senior Counsel
For Mr.K.Prabhu

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to set aside the Docket Order, dated 02.01.2023, on the file of the Fast Track Mahila court, Kanyakumari at Nagercoil and consequently direct the learned Judge to take the petition filed by the petitioner under Sections 45 and 73 of the Indian Evidence Act for obtaining the opinion of the handwriting expert by comparing Ex.P 2 and Ex.P.3, number the same and decide it on merits.

2.The learned Senior Counsel appearing for the petitioner would submit that the learned Sessions Judge, Mahila Court, kanyakumari, returned the petition stating that the signature in Section 164 Cr.P.C. statement and in the complaint, are admitted by PW.1; that the petitioner is not a witness either for the complaint or for Section 164 Cr.P.C statement; that the handwriting expert opinion is just only an opinion and that cannot disprove the signature of the victim in the complaint, that if required, the Court can compare the signature



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under Section 73 of the Indian Evidence Act and that the High Court had directed the trial Court to dispose of the case within a specified time frame.

3.As rightly pointed out by the learned Senior Counsel appearing for the petitioner, the time frame fixed by this Court is not a ground to reject or dismiss the application.

4.The learned Additional Public Prosecutor would contend that the witness PW.1 has specifically admitted her complaint as well as the statement given under Section 164 Cr.P.C, and the signatures found therein.

5.The Petitioner, alleging that there existed a huge difference between the said two signatures of the defacto complainant, has sought for comparison of the signatures and for an expert opinion. But, the fact remains that the said signatures were specifically admitted by the complainant herself and as such, the question of sending to the expert opinion does not arise. It is not the case of the petitioner that he had witnessed that some other person had subscribed his signature in the complaint and not the PW.1.



6. Even assuming for argument sake that an expert opinion is received from the handwriting expert giving their opinion that both the signatures are different, even then, that by itself does not advance the case of the petitioner. Further, at this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in the case of ***Chennadi Jalapathi Reddy Vs. Baddam Pradhapa Reddy (dead) and another*** in ***Civil Appeal Nos. 7818 and 7819 of 2019 reported in (2019) 14 SCC 220***, wherein it has been held as follows:

7. As mentioned supra, the High Court mainly relied upon the opinion evidence of DW-2, the handwriting expert, who opined that the signature of the first defendant on the agreement of sale Ext. A-1 did not tally with his admitted signatures.

8. By now, it is well-settled that the Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the Court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it. In this respect, reference may be made to a long line of precedents that includes Ram Chandra and Ram Bharosey V. State of Uttar Pradesh, AIR 1957 SC 381, Shashi Kumar Banerjee V. Subodh Kumar Banerjee, AIR 1964 SC 529, Magan Bihari Lal Vs. State of Punjab, (1977) 2 SCC 210, and S. Gopal Reddy Vs. State of Andhra Pradesh, (1996) 4 SCC 596.



7.The Hon'ble Apex Court in the case of ***Shasi Kumar Banerjee and others Vs. Subodh Kumar Banerjee since deceased & after him his L.rs. & Ors.*** reported in ***AIR (1964) SC 529*** has observed that the evidence of a handwriting expert should rarely be given precedence over substantive evidence.

8.In the case on hand, as already pointed out, P.W.1 has specifically admitted the lodging of complaint and her giving statement under Section 164 Cr.P.C and the signatures found therein. It is pertinent to note that the petitioner without any basis, has filed the above petition for handwriting expert opinion.

9.The learned Senior Counsel appearing for the petitioner would further submit that the trial Court without taking the petition on file and without hearing the other side, has passed the docket order that the petition cannot be entertained; that the trial Court ought to have taken the petition on file and after hearing both the sides, orders should have been passed and that the impugned order is not good in law and the same is liable to be set aside on that ground itself.



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10. In *Madiraju Venkata Ramana Raju Vs. Peddireddigary Ramachandra Reddy and Others* reported in (2018) 14 SCC 1, the Honble Apex Court has specifically observed that if the Court on the presentation of the plaint is of the view that the plaint does not fulfil the statutory and constitutional requirements, the plaint can be rejected either after admitting the plaint or even before admitting the same and that therefore, the trial Court has the power to reject the plaint even at the pre-registration stage. In the case of *Saleem Bhai Vs. State of Maharashtra and Others* reported in (2003) 1 SCC 557, the Hon'ble Supreme Court has held that a perusal of order 7 Rule 11 C.P.C makes it clear that the trial Court can exercise the power under Order 7 Rule 11 C.P.C at any stage of the suit, before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. When the Hon'ble Apex Court has reiterated the legal position that even the plaint can be rejected at pre-registration stage, this Court is at loss to understand as to why the same principle cannot be applied to the interlocutory applications.

11. No doubt, the above decisions were given in the civil proceedings



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and the said principle can also be applied to the miscellaneous applications filed in the criminal side. Generally, if any application is filed, the trial Courts are expected to number the petition and take the same on file, but that procedure cannot be applied in all cases. In case if the petitions are filed only with an intention to drag on the proceedings and to protract the trial, it cannot be stated that such petitions should be taken on file, notice to be given to the other side, counter or reply to be received, hear the arguments and then to pass orders. In the case on hand also, the learned trial Judge has specifically observed that this Court has already directed the trial Court to dispose of the case within the time stipulated.

12.Considering the above passing of the docket order, not entertaining the petition cannot be found fault with. Moreover, the petitioner has not shown any other reason or ground to grant the relief claimed. A cursory perusal of the records would make it clear that the above petition came to be filed only to delay the proceedings. Hence this Court concludes that this Criminal Original Petition is devoid of merits and the same is liable to be dismissed.



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13.In the result, this Criminal Original Petition stands dismissed.

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NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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To

1. The Inspector of Police,
CBCID Police Station,
Nagercoil,
Kaniyakumari District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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