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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/03/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)No.193 of 2023

and

Cr1.MP(MD)No.2752 of 2023

C.Mani : Petitioner/Petitioner/
Accused

Vs.

Soundara Nayagi : Respondent/Respondent/
Complainant

Prayer:- This Criminal Revision has been filed under section 307 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the impugned order, dated 23/12/2022 passed in Cr1.M.P No.4412 of 2022 in STC No.5 of 2002 on the file of the Judicial Magistrate, Thiruvaiyaru, Thanjavur District and to set aside the same and direct the Judicial Magistrate to send the complaint cheque Ex.A2 for expert opinion for comparing the writings in the cheque leaf Ex.A2 and the petitioner's admitted writings of the same wordings found in the cheque leaf Ex.A2 and get the expert opinion and pass further or other orders.

For Petitioner : Mr.M.R.Sreenivasan



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O R D E R

This criminal revision has been filed seeking to set aside the order, dated 23/12/2022 passed in Crl.M.P No.4412 of 2022 in STC No.5 of 2002 on the file of the Judicial Magistrate, Thiruvaiyaru, Thanjavur District and direct the Judicial Magistrate to send the complaint cheque Ex.A2 for expert opinion for comparing with writings in the cheque leaf Ex.A2 and the petitioner's admitted writings of the same wordings found in the cheque leaf Ex.A2 and get the expert opinion.

2.The facts in brief:-

The petitioner is facing the charge under section 138 of the Negotiable Instruments Act before the trial court in STC No.5 of 2022. He filed a petition under section 45 of the Indian Evidence Act, seeking direction to the Forensic Science Laboratory to examine the disputed signature found in the cheque with that of his admitted signature. That was dismissed by the trial court. Against which, this criminal revision has been filed.



3.Heard both sides.

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4.On going through the order of the trial court, it is seen that the signature was not denied by the petitioner and reference was also made to the notice that was sent by the petitioner under Ex.P6. When there is a clear admission on the part of the petitioner with regard to the signature, the trial court thought it fit that there is no necessity to send the disputed signature for expert examination.

5.But however, the learned counsel appearing for the petitioner would submit that the above said cheque has been manipulated and he has given the above said cheque as security to one Rajendran, who was the money lender. Along with the above said cheque, they also given unfilled promissory notes to him. The above said has been misused by the respondent herein. But however, at the time of argument, it was submitted on the side of the petitioner that his signature is also disputed in the cheque and the writing. So the learned counsel appearing for the petitioner would submit that writing could be sent for examination. But nowhere in the petition, it has



been stated by the petitioner that along with the signature, writing in the disputed cheque was also sent for comparison. So a belated plea cannot be taken at the revisional stage.

6. Even though, the learned counsel appearing for the petitioner cited the decisions in the case of K.Senthilmurugan Vs. P.Sathishkumar [2018(2) MWN (Cr.) DCC 56 (Mad.) and D.Santhosam Vs. V.K.Periyasamy [(2019)1 MLJ (Criminal) 396] for the purpose of argument that full opportunity must be given to the accused to rebut the presumption under section 139 of the Negotiable Instruments Act.

7. There can be no quarrel on the proposition. But the fact remains that the petitioner already admitted the signature and now only disputing the writing. But such was not the plea before the trial court. A new plea cannot be taken by the petitioner at this revisional stage. So, I find no merit in this criminal revision and accordingly, it is liable to be dismissed.



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8. In the result, this criminal revision fails and the same is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

02/03/2023

Index:Yes/No
Internet:Yes/No
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To,

The Judicial Magistrate,
Thiruvaiyaru,
Thanjavur District.



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G . ILANGO VAN , J

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