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Crl.R.C.(MD).No.1248 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.1248 of 2022
and Crl.M.P.(MD).No.15704 of 2022

G.Selvam

... Petitioner

Vs.

Saraswathy

... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.1956 of 2021 in S.T.C.No.262 of 2018 on the file of the Judicial Magistrate, Fast Track Court, (Magistrate Level), Nagercoil, dated 05.11.2022.

For Petitioner : Mr.R.Balakrishnan

For Respondent : Mr.N.Pragalathan

ORDER

This Criminal Revision Case has been filed against the order passed in Crl.M.P.No.1956 of 2021 in S.T.C.No.262 of 2018 on the file of the Judicial Magistrate, Fast Track Court, (Magistrate Level), Nagercoil, dated



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2.The brief facts in brief:

The complainant filed a complaint under Section 138 of the Negotiable Instruments Act, stating that the accused borrowed a sum of Rs.2,00,000/- on 26.03.2015 and issued a cheque towards discharge of the same on 26.09.2015. When that was presented for payment, it was returned as 'dis-honoured'. Over which, the above said complaint has been preferred. During the pendency of the above said complaint, the petition under Section 45 of the Indian Evidence Act was filed by the accused to send the disputed signature in the disputed cheque for Expert examination along with the admitted signatures, that was allowed. Against which, this revision petition has been preferred by the complainant.

3.The above said petition was resisted by the revision petitioner stating that to recover the amount a suit in O.S.No.303 of 2016 was preferred and that was also decreed and in that suit, no such contention was raised to the effect that the signature is forged one. Against the civil court finding and the defence, a new plea has been taken that the signature is a



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fake one. But, however, the trial Court allowed the petition for giving a fair chance to the accused to defend the case.

4.I am unable to find only reason that was given or assigned by the trial Court for the simple reason that when there is no denial on the part of the respondent herein, over the signature before the civil Court, how the above said document again be subjected to expert examination to verify the signatures, is not at all understandable.

6.The learned counsel for the respondent would submit that against the above said decree an appeal has been preferred and is pending. But mere filing of the appeal is not sufficient enough to subject the document for expert examination, more particularly, when there is a statement in the above said suit to the effect that he issued the above said cheque towards the above payment of sale consideration. Now the belated contention cannot be and ought not to have been accepted by the trial Court. On the sole ground this revision is liable to be allowed.

7.Accordingly, this criminal revision petition is allowed and the order passed by the Judicial Magistrate, Fast Track Court, (Magistrate



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Level), Nagercoil, in Crl.M.P.No.1956 of 2021 in S.T.C.No.262 of 2018 dated 05.11.2022, is set aside. Consequently, connected miscellaneous petition is closed.

03.03.2023

Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate, Fast Track Court, (Magistrate Level), Nagercoil.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

TM

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