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Crl.R.C.No.691 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.R.C.No.691 of 2022
and Crl.M.P.No.7234 of 2022**

M.Ravichandran

... Petitioner

Vs.

A.Aditya

... Respondent

PRAYER : Criminal Revision filed under Section 397 of the code of Criminal Procedure, 1973 to set aside the order dated 07.03.2022 made in Crl.M.P.No.1635 of 2022 in S.T.C.No.500 of 2019 on the file of the learned Judicial Magistrate No.II, Tirupattur, Vellore District.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondent : Mr.G.Vinod Kumar

ORDER

The Criminal Revision Case is filed to set aside the impugned



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order dated 07.03.2022 passed in Crl.M.P.No.1635 of 2022 in S.T.C.No.500 of 2019 by the learned Judicial Magistrate No.II, Tirupattur, Vellore District.

2. The learned counsel appearing for the petitioner submits that the respondent has filed a complaint against the petitioner under Section 138 of Negotiable Instruments Act as if the petitioner has agreed to sell his house to the respondent for a sum of Rs.26,00,000/- and has received an advance amount of Rs.22,00,000/- and executed an agreement of sale and when it was brought to the notice of the respondent that the petitioner has obtained loan by pledging his house to the Bank, the respondent insisted the petitioner to give the advance amount, for which, the petitioner gave a cheque bearing No.402152 dated 12.02.2019 and it was presented before the Bank, however, the same was returned as funds insufficient. However, the petitioner never executed any agreement for sale, but borrowed a sum of Rs.2,00,000/- as loan from the respondent, who in turn, had obtained blank cheque from the petitioner and forged the petitioner's signature in the



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cheque. Since there is variation in the size and ink of the amount in the cheque, the petitioner has filed the petition under Section 45 of the Evidence Act to send the cheque containing the signature of the petitioner to the Handwriting Expert for comparison of the signature with the admitted signature of the petitioner and also to ascertain the age of the ink of the amount filled in the cheque, however, it was dismissed. Challenging the same, the present petition has been filed.

3. The learned counsel appearing for the respondent submits that the issue raised in this petition is no longer *res integra* and when a similar issue came up for consideration before this Court in Crl.R.C.Nos.49 and 50 of 2009, this Court, after elaborate discussion, has allowed the Criminal Revision Cases vide order dated 21.01.2010 and the orders passed by the learned Magistrate directing the documents to be forwarded for comparison by an Expert for opinion were set aside by this Court, since there is no scientific method available to offer opinion, in respect of ascertaining the age of the ink or the age of the writings on a



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document. Accordingly, he prays for dismissal of this petition.

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4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

5. The petitioner is the accused in S.T.C.No.500 of 2019 filed by the respondent before the learned Judicial Magistrate No.II, Tirupattur, Vellore District, for having issued a bounced cheque, wherein, the petitioner has filed a petition in Crl.M.P.No.1635 of 2020 to send the cheque containing the signature of the petitioner to the Handwriting Expert for comparison with the admitted signature and to ascertain the age of the ink of the amount filled in the cheque on the ground that the respondent has obtained blank cheque from him and forged his signature. The trial Court has dismissed the petition stating that in the case of *Bir Singh vs. Mukesh Kumar*, the Hon'ble Apex Court held that if a signed blank cheque is presented to payee, the payee may fill up the amount and other particulars and it would not invalidate the cheque and the onus is on the accused to prove that the cheque was not issued towards discharge of a debt or liability



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by adducing evidence and there is no mechanism or expertise to find out the age of ink of the amount filled in the cheque.

6. A similar issue came up for consideration before this Court in Crl.R.C.Nos.49 and 50 of 2009, wherein, this Court has raised a query as to whether there is any expert in terms of Section 45 of the Evidence Act, who shall be competent to examine scientifically and offer opinion in respect of the age of the writings on a document. In reply to the same, the Assistant Director, Document Division, Forensic Science Department, Government of Tamil Nadu, Chennai, has appeared before this Court and gave the following explanations:

"According to him, he is the Head of the document division of the department. On a query made by this Court regarding the above position, he would explain to this Court that there is no scientific method available anywhere in this State, more particularly, in the Forensic Science Department, to scientifically assess the age of any writing and to offer opinion. However, he would submit that there is one institution known as Neutron Activation Analysis, BARC, Mumbai, where there is facility to find



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out the approximate range of the time during which the writings would have been made. It is a Central Government organisation. According to him, even such opinion cannot be exact. He would further submit that since it is a Central Government Organisation and confined only to atomic research, the documents relating to prosecutions and other litigations cannot be sent to that institution also for the purpose of opinion. He would further submit that if a document is sent for comparison, with the available scientific knowledge, opinion to the extent as to whether the same could have been made by an individual, by comparing his admitted handwritings or signatures, alone could be made. He would further submit that if there are writings with two different inks in the same document, that can alone be found out. But he would be sure enough to say that the age of the writings cannot be found out at all to offer any opinion."

7. Taking into consideration the statements made by the Head of the Department of Forensic Science, this Court held that the disputed documents sent for opinion to the Forensic Department in respect of the age of the writings and the documents is only futile and there is no Expert available in the field for offering opinion and thereby, the request for sending the documents for ascertaining the age of the writings was rejected



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and the orders, which were under challenge in the aforementioned criminal revision cases, passed by the trial Court directing the disputed documents to be forwarded for comparison by the Expert for offering opinion were also set aside, by allowing the Criminal Revision Cases vide order dated 21.01.2010. Applying the above ratio laid down by this Court, this Court has no hesitation to hold that it is not possible to find out the age of the ink contained in the disputed documents by the Expert, since there is no scientific method available for offering opinion in respect of the age of the ink contained on the disputed documents and the trial Court, appreciating the above facts properly, dismissed the petition filed by the petitioner, which does not require any interference from this Court.

8. Accordingly, the Criminal Revision Case is dismissed.
Connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
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M.DHANDAPANI, J.

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To

The learned Judicial Magistrate No.II, Tirupattur, Vellore District.

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