



Crl.O.P.No.13443 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 03.09.2024

Pronounced on: 06.09.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.13443 of 2024
& Crl.M.P.No.8148 of 2024

V.Kalyan Kumar.

.... Petitioner/ Accused

/versus/

R.Venkatesan.

.... Respondent/defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to set aside the docket order dated 24.04.2024 made in memo pertaining to Crl.M.P.No.285 of 2024 in C.C.No.135 of 2021 on the file of the Judicial Magistrate, Fast Track Kallakurichi.

For Petitioner : Mr.AR.M.Arunachalam.

For Respondent : Mr.N.Umapathi.

ORDER

The petitioner herein is the accused in C.C.No.135 of 2021 on the file of the Judicial Magistrate, Fast Track Court, Kallakurichi.

2. The complaint has been filed under Section 138 of N.I Act



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for issuing cheque for Rs.5,00,000/- dated 11.04.2021 without sufficient fund to the respondent/complainant and the same is contested by the petitioner/accused on the ground that the signature found in the cheque is not his signature. Hence, he filed the application under Sections 45 and 73 of the Indian Evidence Act r/w Section 243 of Cr.P.C to send the disputed cheque to Expert for comparison with his admitted signature for opinion.

3. The Learned Judicial Magistrate allowed the application in C.M.P.No.285 of 2024 on 07.03.2024 under the following conditions:

1. The petitioner / accused shall furnish three documents containing his signature and handwriting and such documents should belong to the period of April 2021 to December 2021.

2. The documents furnished by the petitioner should not have been created for self purpose / own use and it should be in the nature of being created for the purpose of others like a public document or documents given by the petitioner to banks or other institutions.



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3. The court will decide the fitness of the documents furnished by the petitioner and in the event of the court finding any document to be unfit, the petitioner should furnish another fit document.

4. In the event of the petitioner furnishing fit documents as required above the disputed cheque and such documents will be sent for analysis to government forensic science laboratory where the expert analysis of documents would be performed.

5. The petitioner shall bear all the expenses for sending the disputed cheque for expert analysis and the petitioner shall also bear the remuneration of an advocate commissioner who will deliver all the necessary documents to the expert on behalf of the court.

6. The Advocate commissioner will be appointed after the petitioner furnishes fit documents as required above.



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7. For the limited purpose of adducing evidence relating to expert opinion of the disputed cheque, the defense side evidence will be reopened.

8. The petitioner should comply with all the above conditions and requirements within a period of one month, unless there are sufficient reasons for extension, from the date of order and if the petitioner did not do so and he is found to be unnecessarily causing delay in the process of the court, this petition will be dismissed.

4. The petitioner/accused had filed memo dated 24.04.2024 enclosing the following three documents as admitted documents for comparison.

(i). Letter dated 23.09.2020 submitted by the accused to the Commercial Department.

(ii). Cheque signed by the accused dated 01.03.2021 given to Punjab National Bank.

(iii). Sale deed dated 22.02.2021 in which the accused has signed as one of the witness.



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5. The Learned Magistrate considering the nature of the documents listed in the memo, accepted the first document and rejected the other two documents. Further, directed the accused to furnish any other two documents fit for examination. The said docket order dated 24.04.2024 is under challenge in this petition.

6. The Learned Counsel for the petitioner contended that the Learned Judicial Magistrate erred in fixing April 2021 to December 2021 as contemporaneous period for testing the signature in the cheque dated 11.04.2021. In fact, accepted documents which are reasonable, prior to the disputed document ought to have been taken for comparison instead the Learned Judicial Magistrate sought for documents which were executed subsequent to the disputed cheque.

7. The Learned Counsel further submitted that the Learned Magistrate while accepted the first document dated 23.09.2020 which in fact prior to March 2021, had assigned no reason for rejecting the other two document which are dated 01.03.2021 and 22.02.2021 which are nearer to April 2021.



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8. Per contra, the Learned Counsel for the respondent/complainant submitted that, the Learned Judicial Magistrate apart from fixing the period of the documents between April to December 2021, also has laid condition that the document should not be created for self purpose/own use and it should be in the nature of being created for the purpose of others like public document or document given by the petitioner to Banks or other institutions. The 2nd and 3rd documents were rejected since those two documents does not satisfy the 2nd condition.

9. The rival contentions of the Learned Counsel for the petitioner and the Learned Counsel for the respondent heard.

10. From the order of the Learned Judicial Magistrate passed in C.M.P.No.285 of 2024, dated 07.03.2024 and the docket order on the memo dated 24.04.2024, it could be seen that the Learned Judicial Magistrate though had fixed April 2021 to December 2021 as period contemporaneous to the cheque dated 11.04.2021. He has taken the first



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document for comparison though it is dated 23.09.2020 since it satisfy the 2nd condition.

11. The other two documents one being a self serving document and other being a photocopy of the sale deed, it was rejected presumable it is not fit for comparison.

12. The learned Counsel for the petitioner in the course of his argument prayed that, the signature of the petitioner as witness to the document No.761/2021, dated 22.02.2021 is also available in the register maintained at SRO Office Cuddalore and if the original signature has to be seen by the Expert, the Learned Magistrate shall appoint an Advocate Commissioner to collect the Register or authorise the Expert to visit the SRO Office, Cuddalore to examine the document/take photograph for the purpose of comparison. He also submitted that the 2nd document i.e., Self cheque of Punjab National Bank, dated 01.03.2021 is a document given to the Bank and honoured by the Bank, being satisfied with the signature of the account holder. Therefore the original cheque which will be in the custody of the Bank can be called for or examined



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by the Expert visiting the Bank with the permission of the Court. He further submitted that if the examination of the original of these two documents, for any reason not feasible, the petitioner may be permitted to produce any other documents to the satisfaction of the Learned Magistrate to prove his defence.

13. On considering the above submission, in order to provide fair opportunity to the accused to put forth his defence, the docket order dated 24.04.2024 passed by the Learned Judicial Magistrate, Kallakurici is set aside.

14. The memo of the petitioner filed on 24.04.2024 to be considered afresh based on the submission made by the petitioner which is extracted in paragraph No.12 and pass appropriate order in the memo.

15. The petitioner may be permitted to produce any other alternate document which may be fit for comparison with the disputed document, if the Learned Magistrate find all or any document



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mentioned in the memo is not fit for comparison. The petitioner shall in such event, shall not delay the process and should come forward to offer alternate document within 15 days, from the date of order passed in the memo. Failing which, the Learned Magistrate shall proceed to the next stage of the trial and complete the same as expeditiously as possible.

16. Accordingly, this Criminal Original Petition is disposed of with the above direction. Consequently, connected Miscellaneous Petition is closed.

06.09.2024

Index :Yes
Speaking Order/Non-Speaking Order.
bsm

To:-

1. The Judicial Magistrate, Fast Track Kallakurichi.



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DR.G.JAYACHANDRAN,J.

bsm

delivery order made in
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06.09.2024