



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P Nos.742 & 745 of 2024
and CRL.M.P Nos.481 & 484 of 2024

Malathi

...Petitioner
in both Crl.O.Ps

Vs.

Balaji

...Respondent
in both Crl.O.Ps

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.II, Villupuram, Villupuram District in C.M.P.No.8959 of 2023 and C.M.P.No.8960 of 2023 in S.T.C.No.916 of 2022 common order dated 04.12.2023 in so far as it relates to the petitioner herein.

For Petitioner : Mr.A.Murugavel
in both Crl.O.Ps

ORDER

These petitions have been filed challenging the order passed by the Court below in C.M.P.No.8959 of 2023 and C.M.P.No.8960 of 2023, dated 04.12.2023 by the learned Judicial Magistrate No.II, Villupuram, dismissing the application filed under Section 311 of Cr.P.C., to reopen the case for sending the disputed cheque,



challan and the other documents for expert opinion through an Advocate Commissioner and to obtain expert opinion.

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2.The petitioner is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act. The main defence that has been taken by the petitioner is that she did not have any transaction with the respondent and that she has not issued any cheque in favour of the respondent. According to the petitioner, the cheque that was signed by her and handed over to her husband and which was kept in the office, was misused by the respondent and based on the same, complaint has been filed under Section 138 of the Negotiable Instruments Act. Hence, the petitioner wanted to establish that the contents of the cheque was not filled up by her and the hand writing found in the cheque must be compared with the admitted documents by a forensic expert and a report must be given.

3.The Court below while dealing with this plea, took into account Section 20 of the Negotiable Instruments Act. The Court below also took into consideration the fact that the person who fills up the cheque, becomes immaterial in a case under Section 138 of the Negotiable Instruments Act, since what is material is only the drawers signature that is found in the cheque. Since the petitioner has not disputed her signature in the cheque, the Court did not find any ground to order the application filed by the petitioner seeking for expert opinion.



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4. In the considered view of this Court, the order passed by the Court below does not suffer from any illegality or infirmity warranting the interference of this Court. The Court below has gone by the settled principles of law, which does not require any interference. The hand writing that is found in the cheque may not be relevant in a case where the signature in the cheque has not been disputed. Therefore, if the petitioner contends that signed cheque has been misused, it has to be established before the Court below independently in the manner known to law by examining the relevant witnesses and it cannot be done by merely sending the cheque for expert opinion. Except giving this clarity, there is no reason to interfere with the order passed by the Court below.

5. These criminal original petitions are disposed of in the above terms. Consequently, connected miscellaneous petitions are closed.

22.01.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
ssr



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N.ANAND VENKATESH, J

ssr

To

1.The Judicial Magistrate No.II, Villupuram, Villupuram District.

2.The Public Prosecutor,
High Court, Madras.

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