



CrI.R.C.No.2231 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.2231 of 2023
and
CrI.M.P.No.19975 of 2023

K.Sundararaj

... Petitioner

Vs.

S.Elangovan

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order dated 17.11.2023 made in C.M.P.No.5511 of 2023 in S.T.C.No.10140 of 2022 by the learned Judicial Magistrate No.III, Salem.

For Petitioner : Mr.R.Munuswamy
For Respondent : Ms.V.Gayathri

ORDER

The petitioner/complainant filed a private complaint against the respondent in S.T.C.No.10140 of 2022 before the learned Judicial Magistrate No.III, Salem, for offence under Section 138 of the Negotiable



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Instruments Act. The respondent filed a petition under Section 45 of the Indian Evidence Act in C.M.P.No.5511 of 2023 to examine and study the signature. The Trial Court by order dated 17.11.2023 allowed the same. Against which, the present revision petition is filed.

2.The contention of the learned counsel for the petitioner is that the petitioner examined himself as P.W.1 and marked Ex.P1 to Ex.P4. Ex.P1 is the cheque for Rs.10,00,000/-. The petitioner was cross examined by the respondent and during cross examination, the defence taken by the respondent that the petitioner's claim of respondent coming to the petitioner's house on 28.04.2021, receiving a loan of Rs.10,00,000/- in the presence of petitioner's wife is totally denied for the reason that the petitioner normally signs in English but in the Cheque/Ex.P1, the signature found in Tamil. Secondly for the reason that from 29.03.2021 to 06.04.2021, the respondent was admitted in Kuppusamy Naidu Hospital, Coimbatore taking treatment followed by further treatment on 16.04.2021, hence he was not in a position to sign either in Tamil or English. The other point of cross examination is that the petitioner and the respondent's mother



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had some financial dealings, there was some dispute and the respondent filed a case under Section 138 of Negotiable Instruments Act against the respondent's mother, the respondent left a blank cheque unscribed and unsigned which might have come handy to the petitioner and a false case filed. Thereafter, the respondent filed a petition under Section 45 of the Indian Evidence Act seeking to forward the cheque and the specimen signature of the respondent along with his signature in the Vakalat and the affidavit. The Trial Court without considering the need and necessity, allowed the petition directing the respondent to give 70 specimen signatures and those signatures along with the cheque to be compared and studied by the Handwriting Expert. Against which, the present revision filed.

3.The learned counsel for the petitioner submitted that the respondent by putting two or three questions had not made out a case for forwarding the Cheque/Ex.P1 to Handwriting Expert. Further, there is no mention as to whether the 70 signatures are to be in Tamil or English and for what reason, 70 specimen signatures required. If the respondent is now asked to sign, necessarily there might be camouflage and the signature might not tally and



the respondent will take advantage of the same. He further submitted that signatures earlier available to be compared with specimen signature to and standard signature to be derived and thereafter only, disputed signature can be compared with the standard signature, but in this case such procedure is not followed. Hence, prayed for setting aside the order passed by the Trial Court.

4.The learned counsel for the respondent submitted that the respondent's specific case is that the respondent was not well, admitted in the hospital, taken treatment in Kuppusamy Naidu Hospital, Coimbatore from 29.03.2021 to 06.04.2021 and thereafter for review, he went to the Hospital on 16.04.2021 where the respondent was advised not to take long travel and was confined to bed. The respondent had Paralytic attack and he was not in a position to write or sign his name. In such circumstances, on 28.04.2021 the respondent not signed anything, more particularly, Ex.P1 to the petitioner. Further, during cross examination, the petitioner agreed to forward Ex.P1/Cheque to Handwriting Expert to find out the truth. Agreeing so, the respondent filed a petition and obtained an order, now



fearing that the falsity of the petitioner will get exposed, the present petition is filed. Hence, prayed for dismissal.

5.Considering the submissions made and on perusal of the materials, it is seen that the respondent has specifically denied the signature and denying the signature alone would not be sufficient. The respondent to put forth his defence and evidence on his behalf is at the stage of Section 254 Cr.P.C., at that time, the respondent can either get into the box under Section 315 Cr.P.C., give his evidence, produce medical records and other records in his support. Further, he can also summon specimen signature available in the Bank, thereafter if required, the Court can pass appropriate orders and not at this stage. The defence of the respondent is not complete and at that stage of defence, the respondent can make such plea. Further, from the impugned order it is not known as to why 70 specimen signatures required and in what language, there is no clarity. At this stage, sending Ex.P1 would only protract the proceedings even before the stage of defence. In view of the same, this Court is inclined to set aside the order passed by the Trial Court.



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6. Accordingly, the order passed by the learned Judicial Magistrate No.III, Salem in Crl.M.P.No.5511 of 2023 in S.T.C.No.10140 of 2022 dated 17.11.2023 is set aside. Liberty is given to the respondent to file appropriate petition, if required, at a later stage

7. In the result, the criminal revision petition stands allowed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
cse

To

The Judicial Magistrate No.III,
Salem.



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M.NIRMAL KUMAR, J.

cse

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