



Crl.R.C.(MD).No.36 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.36 of 2024
and
Crl.M.P(MD).No.449 of 2024

Elisabeth Mary

... Revision Petitioner /Petitioner/Accused

Vs.

Claramary

... Respondent/ Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of pertaining to the order passed by the Learned Judicial Magistrate Court, Athoor in Crl.M.P. No.4693 of 2023 in C.C.No.23 of 2021 dated 06.12.2023 and set aside the same.

For Petitioner : Mr.S.Sarvagan Prabhu

For Respondent : Mr.M.Venkatesan



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ORDER

The petitioner filed this petition to set aside the order passed by the Learned Judicial Magistrate Court, Athoor in Crl.M.P.No.4693 of 2023 in C.C.No.23 of 2021 dated 06.12.2023.

2.The case of the prosecution is that the petitioner borrowed a loan for a sum of Rs.9,00,000/- from the respondent on 10.10.2020. To discharge the said debt, she issued a cheque, dated 21.01.2021 drawn on the bank of State Bank of India, Dindigul Branch. The respondent presented the cheque before her Bank on 25.01.2021 and the same was returned on the same day with an endorsement of “Exceeds Arrangement”. So, the respondent issued the legal notice on 24.02.2021. The petitioner sent the reply notice through her counsel on 08.03.2021 and she did not make any payment. In such circumstances, the respondent filed a complaint under Section 138 Cr.P.C., before the learned Judicial Magistrate Court, Athoor. The learned Judicial Magistrate, Athoor, has taken the complaint on file in C.C.No.23 of 2021. After examination of complainant side witnesses, the case was posted for the defence witnesses. After completing 313 Cr.P.C., questioning, the petitioner filed an application in



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Crl.M.P.No.4693 of 2023 to send the cheque for getting hand writing expert's opinion. That application was dismissed by the learned trial Judge. Aggrieved over the same, the present revision has been filed by the petitioner.

3.The learned counsel appearing for the petitioner submitted that the cheque, which was returned by the bank authorities with an endorsement 'Exceeding Arrangement' is to be sent to the expert for his opinion to prove the case. Hence, he prays this Court to allow the prayer in Crl.M.P.No.4693 of 2023.

4.The learned counsel appearing for the respondent submitted that the application was filed belatedly after completion of 313 Cr.P.C., questioning. There is no good intention and the same was filed only with an intention to prolong the trial pending before the trial Court from 2021 onwards. Hence, he seeks for dismissal of this petition.

4.1. The learned counsel appearing for the respondent relied the following judgments of the Supreme Court:



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- 4.1.1. ***Bir Singh Vs. Mukesh Kumar*** reported in **2019 4 SCC 197**.
- 4.1.2. ***K.Ramesh Vs. K.Kothandaraman*** in **SLP (Crl) No.3377 of 2019**.
- 4.1.3. ***Kalaiselvi Vs. A.Sivasubramanian*** reported in **2014 (2) TLNJ 407 (Crl)**.
- 4.1.4. ***Selvanayaki Vs. K.A.Palanisamy*** reported in **2019 (2) TNLR 284 (Mad)**.

5. This Court considered the rival submission made on either side and also perused the record and the impugned order.

6. The petitioner admitted the issuance of cheque dated 21.01.2021 and the same was returned with an endorsement “Exceeding arrangement”. The respondent has initiated proceeding in C.C.No.23 of 2021. After the completion of 313 questioning and examination of the defence witnesses, now the petitioner filed the petition under Sections 45 and 73 of the Evidence Act r/w 247 Cr.P.C., seeking the Handwriting Expert Opinion relating to the contents of the cheque that it is only of the year 2023. She wants to ascertain the age of the ink. The said prayer is not maintainable at this stage. The case is posted for argument. This Court in the case of ***Selvanayaki Vs. K.A.Palanisamy*** reported in **2019 (2)**



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TNLR 284 (Mad) has held as follows:

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Negotiable instruments Act, 1881-Section 138-trial under-accused moved application for sending the cheque to the Hand Writing Expert in order to show that the writings in the cheque were not those of the accused-dismissal of-accused has not disputed his signature in the cheque-No plea taken when the accused was examined under Section 313 Cr.P.C.,-Matter was posted for defence witness, the accused moved application under Section 45 of the Evidence Act-When accused has admitted his signature in a cheque to send the cheque to an expert to determine the ink and writings is only to delay the proceedings-revision dismissed.

10.Without going to the legal provision on facts, this Court holds that when the accused has admitted his signature in a cheque and even when he was questioned under Section 313 Cr.P.C., he had not taken such plea that the writings are not those of his, the petition under Section 45 of the Evidence Act to send the cheque to an always open to the Trial Court to exercise the powers under Section 73 of the Evidence Act, while delivering the final judgment.



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In the result, this Criminal Revision is dismissed as being devoid of merits. Connected miscellaneous petition is closed.

6.1.The Hon'ble Supreme Court in the case of Bir Singh v. Mukesh Kumar reported in 2019 4 SCC 197 has held as follows:

38. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant complainant, it may reasonably be presumed that the cheque was filled in by the appellant complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.



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7.In the above circumstances, this Court finds no merit in the dismissal of the petition filed by the petitioner. The learned trial judge correctly dismissed the petition on the ground that the petitioner filed the case only with an intention to protract the case. Even during 313 questioning also she has not raised any question relating to the contents of the cheque. Therefore, this Court finds no reason to interfere in the impugned order passed by the learned trial Judge.

8.Accordingly, the order passed by the Learned Judicial Magistrate Court, Athoor, in Crl.M.P.No.4693 of 2023 in C.C.No.23 of 2021, dated 06.12.2023, is hereby confirmed and the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No

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To

1. The Learned Judicial Magistrate,
Athoor.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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