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Crl.O.P.(MD).No.12228



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.12228 of 2023

and

Crl.M.P.(MD).No.9597 of 2023

V.Ananth

...Petitioner

Vs.

C.Sivashankar

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to call for the records in Crl.M.P.No.814 of 2023 dated 16.02.2023 in C.C.No.97 of 2021 on the file of the Fast Track (Magistrate Level), Kovilpatti, Tuticorin District and set aside the same.

For Petitioner : Mr.KA.Raamakrishnan

For Respondent : Ms.Porkodikarnan

ORDER

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.814 of 2023 in C.C.No.97 of 2021 dismissing the application filed by the petitioner under Section 45 of the Indian Evidence Act, 1872, to send the subject cheques for expert opinion in order to ascertain the material alteration made in the cheques.



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

3. The respondent has filed a private complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881. The petitioner in the course of examination of P.W.1 was trying to establish a defence that the dates in the cheques have been materially altered by the respondent and that the cheques which were given as security was misused by the respondent. Hence, the petitioner filed an application before the Court below to send the cheques for expert opinion.

4. The Court below was not inclined to allow the application, since the Court below came to the conclusion that the application itself has been filed only to drag on the proceedings and that the petitioner has admitted the signature that is found in the cheques and therefore, there is no need to send the cheque for expert opinion.

5. The sum and substance of the submissions made on the side of the petitioner is that the cheques in question were given as security to the respondent and the same has been misused by altering the month in every cheque that was given



by the respondent. According to the learned counsel appearing for the petitioner, such material alteration is apparent on a mere look at those cheques and therefore, the petitioner had sought for sending those cheques for expert opinion.

6. Taking into consideration the facts and circumstances of the case and the defence that is now sought to be established by the petitioner in order to rebut the presumption under section 139 of the Negotiable Instruments Act, 1991, it is not necessary to send the cheques for expert opinion under Section 45 of the Indian Evidence Act, 1872. If material alteration, according to the petitioner, is apparent on the face of the cheques, it will always be open to the trial Court to exercise its power under Section 73 of the Indian Evidence Act, 1872. This observation made will sufficiently take care of the grievance expressed by the petitioner. It is also made clear that the observations made by the Court below while dismissing the application will not have any bearing while deciding the case finally on its own merits and in accordance with law. The issue regarding the material alteration stated to have been made in the cheques, can be considered by the trial Court by exercising its power under Section 73 of the Indian Evidence Act, 1872.

7. In the result, this Criminal Original Petition is disposed of with a direction to the Fast Track (Magistrate Level), Kovilpatti, Tuticorin District to dispose of C.C.No.97 of 2021 within a period of four months from the date of receipt



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of a copy of this order. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non Speaking Order

TSG

To

1.The Fast Track (Magistrate Level), Kovilpatti, Tuticorin District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

TSG

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