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*Crl.R.C.No.860 of 2025
&Crl.M.P.No.11827 of 2025*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.860 of 2025
& Crl.M.P.No.11827 of 2025

Jayabalan

..... Petitioner

Vs

Thabaresh

..... Respondent

PRAYER: Criminal Revision Case is filed under Sections 438 r/w 442 of Bharatiya Nagarik Suraksha Sanhita, 2023 to set aside the order in C.M.P.No.1 of 2025 in C.C.No.41 of 2025 dated 24.03.2025 on the file of the Judicial Magistrate No.1, Mettur.

For Petitioner : Mr.C.Kulanthaivel

For Respondent : Mr.S.P.Yuaraj

ORDER

This Criminal Revision Case has been filed as against the order passed in Crl.M.P.No.1 of 2025 in C.C.No.41 of 2025 dated 24.03.2025 on the file of the Judicial Magistrate No.1, Mettur thereby dismissed the



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petition filed under Section 39 of BSA 2023 to send the cheque for a hand writing expert opinion.

2. Heard the learned counsel appearing on either side and perused the materials placed on record.

3. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. Alleging that the petitioner issued cheque towards repayment of the loan amount and same was presented for collection however it was returned for the reason insufficient funds. After issuing showcause notice, the respondent filed a complaint. It has been taken cognizance by the trial court. While pending trial, the petitioner filed an application to send the cheque for hand writing expert opinion to compare the signature containing in the disputed cheque.

4. The specific case of the petitioner is that the petitioner's husband and respondent's husband are friends. While attending the condolence in the petitioner's house, the respondent's husband had



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stolen the alleged cheque and forged the signature of the petitioner.

Thereafter, it was presented for collection. Therefore the petitioner filed an application to send the cheque for hand writing expert opinion. However, it was dismissed on the ground that the signature differs. It was returned for the reason insufficient funds.

5. The learned counsel for the petitioner relied upon the Judgment reported in **2007 I Crimes (SC) 106** in case of **Kalyani Baskar Vs. M.S.Sampornam** in which, the Hon'ble Supreme Court has held as follows:-

“12. Section 243(2) is clear that a Magistrate holding an inquiry under the Cr.P.C in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling he same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the magistrate to compare the expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz., the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an



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opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of their trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C,. Without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable"

6. Thus, it is clear that the accused is entitled to rebut the case of the complainant if the cheque on which the complainant has relied upon for initiating criminal proceeding against the accused would furnish good material for rebutting the same by sending the same for hand writing expert opinion cannot be permitted by not sending the cheque for hand



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writing expert opinion. Therefore, the order passed by the trial cannot be sustained.

7. Accordingly, the order passed in C.M.P.No.1/2025 dated 24.03.2025 by the learned Judicial Magistrate No.1, Mettur is hereby set aside. The trial court is directed to send the cheque for hand writing expert opinion. On receipt of the report from the hand writing expert opinion, the trial court is directed to proceed with the trial and complete the same within a period of six months thereafter.

8. In the result, this Criminal Revision case is allowed. Consequently, the connected Miscellaneous Petition stands closed.

16.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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G.K.ILANTHIRAIYAN, J.



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To

The learned Judicial Magistrate No.I,
Mettur.

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