



CrI.O.P.No.17067 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.17067 of 2025 and

CrI.M.P.No.10702 of 2025

Bhaggiyam Fabrics

Rep. by its Proprietor A.Senthilraja

No.50, Murugesan Nagar

Kamalankuttai Via,

Collectorate Po.,

Erode - 638 011

... Petitioner

Vs.

Subash Kumar Baid

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of BNSS, 2023 to set aside the order dated 28.03.2025 passed in C.M.P.No.6834 of 2024 in S.T.C.No.366 of 2022 on the file of the Judicial Magistrate Fast Track Court No.II, Erode.

For Petitioners

: Mr.J.Titus Enock



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ORDER

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This Criminal Original Petition has been filed by the petitioner to set aside the order dated 28.03.2025 in C.M.P.No.6834 of 2024 in S.T.C.No.366 of 2022 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode.

2. The learned counsel for the petitioner submitted that the respondent has filed a complaint against the petitioner in S.T.C.No.366 of 2022 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode under Section 138 of the Negotiable Instruments Act alleging that the petitioner borrowed money from the respondent on various dates to the tune of Rs.14,20,000/- and after several demands, the petitioner issued 13 cheques to discharge his liability, however when the said cheques were presented for collection the same were returned as 'Account Closed'. Hence, the respondent sent a legal notice to the petitioner and despite the receipt of the legal notice, the petitioner neither sent reply nor paid the cheques amount and hence, the respondent filed the said case. Pending complaint, the petitioner came to know that the cheques/Ex.P.2



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and Ex.P.3 have been altered by the respondent. Hence, at the time of defence

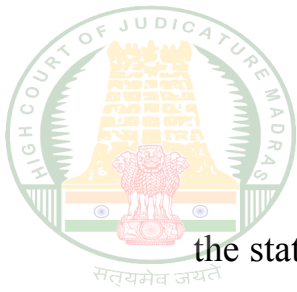
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side evidence, the petitioner filed a petition in C.M.P.No.6834 of 2024 in S.T.C.No.366 of 2022 under Section 45 of Indian Evidence Act to send the disputed cheques/Ex.P.2 and Ex.P.3 to forensic department for handwriting expert opinion on the ground that Ex.P.2 and Ex.P.3 are materially altered. The learned Magistrate failed to consider the scope and object of Section 45 of the Indian Evidence Act and refused to give an opportunity to the petitioner to prove his defence. Therefore, the present petition is filed.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. Since no adverse order is being passed against the respondent, notice to the respondent is dispensed with.

5. It is seen that the respondent has filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act. Though statutory notice was duly served on the petitioner, he did not give any reply to



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the statutory notice. Thereafter, when the complaint summon was served to the

petitioner, he appeared before the Court and even during the proceedings under

Section 251 Cr.P.C., the petitioner admitted the signatures in the alleged

cheques and did not raise any objection regarding the alteration. Thereafter, the

respondent/complainant was examined as a witness and till the completion of

complainant's evidence, the petitioner did not take any stand of alteration or

steps for expert opinion. During questioning under Section 313 Cr.P.C. also, he

did not take any stand or steps to send the disputed cheques for expert opinion.

After completion of complainant's evidence and when the matter was posted

for defence evidence, the petitioner filed the said petition under Section 45 of

the Indian Evidence Act. The Magistrate has elaborately discussed about the

said facts and dismissed the petition. This Court does not find any abuse of

process of law.

6. The petitioner himself admitted the issuance of cheque and also the signatures found in the cheques. The defence of the petitioner is that on earlier



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occasion, the cheques were issued to the respondent for security purpose. This

Court finds that taking advantage of some alteration in the cheques, in order to protract the case, the petitioner has filed the said petition under Section 45 of the Indian Evidence Act and that the petitioner has not made out the case. The grounds taken by the petitioner are nothing but defence. Therefore, this Court is not inclined to entertain this petition.

7. Accordingly. this Criminal Original Petition is dismissed at the admission stage itself. Consequently, the connected Miscellaneous Petition is closed.

8. However, the petitioner is at liberty to take all his defence before the Magistrate during trial.

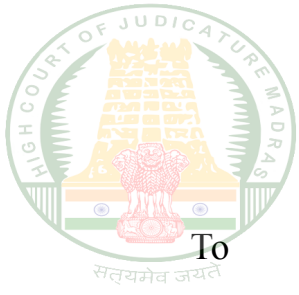
13.06.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

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The Judicial Magistrate,
Fast Track Court No.II, Erode.



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P.VELMURUGAN. J.

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