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Crl.R.C.No.2397 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2397 of 2024

and

Crl.M.P.Nos.18450 & 18452 of 2024

P.K.Sangaman

... Petitioner

Vs.

A.Palanisamy

...Respondent

PRAYER: Criminal Revision Petition filed under Section 438 r/w 442 of BNSS, to set aside the order dated 22.12.2023 passed in Crl.M.P.No.8906 of 2023 in S.T.C.No.112 of 2023 by the learned Judicial Magistrate, Fast Track Court-I, Erode.

For Petitioner : Mr.A.M.Amutha Ganesh

For Respondent : Mr.C.Emalias

for Mr.A.Robinson

ORDER

The revision challenges the dismissal of the petitioner's application filed under Section 45 of the Indian Evidence Act to send the signature in the subject cheque to be compared with the admitted signature of the petitioner.



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2.The petitioner is facing trial for offence under Section 138 of the Negotiable Instruments Act. At the stage of defence, he filed a petition under Section 45 of the Indian Evidence Act, which was opposed by the respondent herein. The trial Court dismissed the said petition stating that the petition is filed only to delay the proceedings.

3.Mr.A.M.Amutha Ganesh, learned counsel for petitioner would submit that the respondent himself in the cross examination stated that he has no objection for sending the signature for comparison and that the return memo issued by the bank clearly states that the cheque was not only returned for the reason 'Account closed' but also for the reason that the signature in the cheque differs and therefore the petition filed by the petitioner cannot be said to be unwarranted.

4.Mr.C.Emalias, learned counsel for respondent per contra submitted that even according to the complainant the cheque was returned for



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the reason signature differs and the question as to whether the cheque was signed by the petitioner or not cannot be decided by the forensic expert; that it is for the trial Court to appreciate the evidence on record; and that in the reply notice the petitioner had also admitted the issuance of three cheques in the year 2020 and prayed for dismissal of the revision.

5.It is seen from the petition that the respondent had admitted the fact that the cheque was also returned for the reason signature differs and that the respondent had also not objected for the signature being compared. Merely because the respondent had not objected, the signature cannot be sent for comparison. Admittedly, the reason for return of cheque is also that the signature differs. The case of the petitioner is that he did not sign the subject cheque and therefore it has to be determined by a forensic expert.

6.This Court is of the view that since admittedly the signature in the cheque differs from the specimen signature of the petitioner given to the



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bank, the questions as to whether the petitioner issued the cheque and whether it was issued for a legally enforceable debt can be determined with reference to other evidence on record and therefore there is no necessity to send it for comparison by an expert. It is needless to say that the learned Magistrate may consider the defence of the accused and the claim of the respondent after considering all the evidence on record.

7. With the above observation, the Criminal Revision Case stands dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

8. It is reported that now the case is transferred to Judicial Magistrate, Fast Track Court No.II, Erode.

02.01.2025

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To
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- 1.The Judicial Magistrate,
Fast Track Court-I, Erode.
- 2.The Judicial Magistrate,
Fast Track Court-II, Erode.
- 3.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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